

III. JOSEPH BARBOZA AND THE DEEGAN MURDER PROSECUTION: AN EXTRAORDINARY FAILURE TO SERVE THE ENDS OF JUSTICE

What happened in New England over a forty year period is, without doubt, one of the greatest failures in federal law enforcement history. It began with the development of Jimmy and Stephen Flemmi as federal criminal informants, and with the prosecution of six individuals for the murder of Edward “Teddy” Deegan. Evidence obtained by the Committee leads to the conclusion that the death penalty was sought against innocent men regardless of compelling evidence of an injustice. In all probability, this happened because informants were being protected and some members of the FBI adopted an “ends justifies the means” approach to law enforcement.

A. BARBOZA, THE FLEMMIS, AND THE DEEGAN MURDER PROSECUTION

The two greatest challenges facing law enforcement in New England in the mid-1960s were organized crime and a gang war between supporters of feuding local criminals. It is not surprising, therefore, that heavy reliance was placed on developing informants to provide both advance notice of criminal activity and after-the-fact intelligence. The need to develop informants was particularly great in the area of organized crime. For decades, FBI Director J. Edgar Hoover publicly maintained that there was no such thing as organized crime. As Hoover’s long-time aide Cartha “Deke” DeLoach pointed out:

Despite this now-familiar history of the mob in America, it surprises most people to learn that from the early 1930s until 1957, J. Edgar Hoover had insisted that there was no such thing as La Cosa Nostra—that is, a network of inter-related mobs that coordinated activities and maintained a kind of corporate discipline. . . . His profound contempt of the criminal mind, combined with his enormous faith in the agency he created, persuaded him that no such complex national criminal organization could exist without him knowing about it. He didn’t know about it; ergo it did not exist.³

In retrospect, it is difficult to believe that federal law enforcement failed to recognize decades of significant national, interstate criminal activity. Nevertheless, the Justice Department did not make organized crime a priority until the 1960s.

An important part of the initiative against organized crime began with a decision in 1962 to commence a program of microphone surveillance of major suspected crime figures. In New England, this began with the installation of a listening device in the headquarters of organized crime leader Raymond Patriarca. According to a memorandum drafted in 1967 to recommend the prosecution of Patriarca:

Raymond Patriarca was the subject of an F.B.I. electronic surveillance by means of an electronic eavesdropping de-

³ CARTHA “DEKE” DELOACH, *HOOVER’S FBI: THE INSIDE STORY BY HOOVER’S TRUSTED LIEUTENANT* 302–03 (Regnery Publishing, Inc. 1995).

vice installed by trespass at his place of business, 168 Atwells Avenue, Providence, Rhode Island, during the period March 6, 1962 to July 12, 1965.⁴

The fact that such listening devices were installed “by trespass” proved to be of significance because it meant that information received from the listening device could not be used during prosecutions unless obtained by independent means. This proved to be of consequence for a number of reasons. First, microphone surveillance of Raymond Patriarca provided significant information critical to one of the most important capital murder prosecutions in Massachusetts’s history. Second, the microphone surveillance provided important insights into the conduct of government informants and cooperating witnesses.

The use of the Flemmi brothers as informants over three decades, and Joseph Barboza’s testimony as a cooperating witness in the 1968 Teddy Deegan murder prosecution, appear to have commenced a pattern of unfortunate, and sometimes illegal, conduct that will have ramifications for federal law enforcement for years to come. The following sections discuss events from nearly forty years ago that began with the murder of Teddy Deegan and continue today with the filing of over two billion dollars of civil claims against the federal government.

1. Joseph “The Animal” Barboza

Joseph “The Animal” Barboza was described by the FBI as “the most vicious criminal in New England”⁵ and “a professional assassin responsible for numerous homicides and acknowledged by the professional law enforcement representatives in this area to be the most dangerous individual known.”⁶ In addition to the Deegan murder, the FBI had considerable information that he committed a large number of particularly brutal homicides. An example of Barboza’s extreme disregard for life is found in a memorandum addressed to FBI Director Hoover which discusses information obtained by microphone surveillance:

Joe Barboza requests permission from Patriarca to kill some unknown person. This person lives in a three-story house but Barboza has never been able to line him up to kill him. Barboza told Raymond that he plans to pour gasoline in the basement part of the house and set it afire and thus either kill the individual by smoke inhalation or fire, or in the event he starts to climb out a window, Barboza would have two or three individuals there with rifles to kill him as he started to step out a window or door. Upon

⁴Memorandum from Walter T. Barnes and Edward F. Harrington, Assistant U.S. Attorney, to Henry Petersen, Chief, Organized Crime and Racketeering Section (June 6, 1967) (document is retained by the Justice Department); *see also* Memorandum from J. Edgar Hoover, Director, FBI, to Acting Attorney General, U.S. Dept. of Justice (Dec. 22, 1966) (Exhibit 127) (“The installation of the eavesdropping device placed in Jay’s Lounge was made under the general authority of Attorney General Robert F. Kennedy. By memorandum of May 12, 1965, Attorney General Katzenbach was advised that the device had been in operation since January 9, 1963, and he authorized its continuance. It was discontinued on July 12, 1965.”) (Exhibit numbers are derived from an investigative chronology. The exhibits referred to in this Report are published at the end of this Report in increasing numerical order).

⁵Memorandum from J.B. Adams to Mr. Callahan (Apr. 29, 1968) (Exhibit 226).

⁶Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141).

questioning by Patriarca, Barboza said that he had planned to cut the telephone wires so that the individual could not call for assistance and also to ring false alarms in other sections of the city so that the engines could not respond quickly. He also explained that the third floor apartment was vacant but the first floor apartment was apparently occupied by the intended victim's mother. This apparently caused no concern to Barboza who stated it was not his fault that the mother would be present, and he would not care whether the mother died or not. Patriarca told him that he did not think it was a good idea to effect the killing in the above manner and attempted to dissuade Barboza from this type of killing as innocent people would probably be killed. It was not clear to the informant whether Barboza accepted Patriarca's objections, but Patriarca indicated very strongly against this type of killing.⁷

Another description of Barboza's cold-blooded nature was provided by mafia informant Vincent Teresa:

Barboza went into the club [searching for a member of the McLaughlin mob named Ray DiStasio] and caught DiStasio cold. The trouble was, a poor slob named John B. O'Neil, who had a bunch of kids, walked in to get a pack of cigarettes. Barboza killed them both because he didn't want any witnesses. DiStasio got two in the back of the head and O'Neil got three. It was a shame. I mean, this O'Neil was a family man—he had nothing to do with the mob. Barboza should have waited. That's why he was so dangerous. He was unpredictable. When he tasted blood, everyone in his way got it.⁸

Barboza was reputed to have killed more than twenty people,⁹ and he killed at least one person while part of the federal Witness Protection Program.¹⁰

In 1966, Barboza was arrested on a weapons charge.¹¹ Due to a large number of previous convictions, he faced an extremely lengthy prison sentence for the charges brought against him. Perhaps because of this, he began cooperating with law enforcement personnel the following year and received a relatively light four to five year sentence.¹² At this time, FBI Special Agents H. Paul Rico and Dennis Condon began to work with Barboza to turn him into a cooperating witness.¹³ Apparently, Barboza initially declined to cooperate.¹⁴ However, Rico and Condon were able to use Stephen Flemmi, the brother of Barboza's best friend and partner Jimmy

⁷ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (May 18, 1965) (Exhibit 98).

⁸ VINCENT TERESA, *MY LIFE IN THE MAFIA* 167 (Doubleday & Company, Inc. 1973).

⁹ Alan Jehlen, *Two Say Grieco [sic] Innocent of Deegan Murder*, PEABODY TIMES, June 9, 1971 (Exhibit 402).

¹⁰ Interview with Joseph Williams, former Supervisor of the Warrant & Investigation Unit, Massachusetts Parole Board (June 29, 2001).

¹¹ James Southwood, *A Letter from Barboza, Why I Decided to Tell All*, BOSTON HERALD, July 9, 1967 (Exhibit 148).

¹² U.S. Dept. of Justice Identification Record (Mar. 2, 1976) (Exhibit 129).

¹³ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141).

¹⁴ *Id.*

Flemmi, to obtain his cooperation.¹⁵ In fact, one high level FBI memorandum indicates that Rico and Condon “developed” Stephen Flemmi to obtain Barboza’s cooperation.¹⁶ It is unclear from the records whether the FBI’s knowledge of Jimmy Flemmi’s participation in the Deegan murder—or any other murder—was used to convince Stephen Flemmi or Joseph Barboza to cooperate with federal law enforcement.

Barboza eventually testified in three trials as a cooperating witness.¹⁷ He is generally acknowledged to be the first participant in the federal Witness Protection Program.¹⁸ After being relocated to California, he was considered as a possible Top Echelon informant by the FBI.¹⁹ According to testimony provided by Barboza, he also returned to Massachusetts at the behest of the FBI on a number of occasions to assist them on a case involving the theft of a \$500,000 painting.²⁰ If true, this would have meant that federal law enforcement actively encouraged Barboza to break the terms of his parole. Barboza later committed at least one additional homicide and was incarcerated, a subject which is discussed extensively later in this report. Barboza was murdered on February 11, 1976.²¹

2. The Murder of Edward “Teddy” Deegan

Edward “Teddy” Deegan was, by all accounts, a peripheral figure in the Boston underworld of the 1960s. In late 1964, the FBI learned from an informant that Jimmy Flemmi wanted to kill Deegan.²² Two days later, on October 20, 1964, Deegan was called and warned that Flemmi was looking for him and that Flemmi intended to kill him.²³ Five months later, between March 5 and March 7, 1965, Jimmy Flemmi met with Raymond Patriarca and asked for permission to kill Deegan.²⁴ This request was renewed a couple of days later on March 9, 1965, when Flemmi and Joseph Barboza visited Patriarca and “explained that they are having a problem with Teddy Deegan and desired to get the ‘OK’ to kill him. . . . Flemmi stated that Deegan is an arrogant, nasty sneak and

¹⁵ *Id.*

¹⁶ Memorandum from J.H. Gale to Cartha DeLoach (June 23, 1967) (Exhibit 144).

¹⁷ See Trial Transcript, *Commonwealth v. French* (Suffolk County Super. Ct. July 2, 1968) (Exhibit 243); *Patriarca v. U.S.*, 402 F. 2d 314 (D. Mass. 1968), *cert. denied*, 89 S. Ct. 633 (Jan. 20, 1969); and the murder trial of Rocco DiSeglio.

¹⁸ See “The California Murder Trial of Joe ‘The Animal’ Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 170 (Feb. 14, 2002) (testimony of Judge Edward Harrington).

¹⁹ Memorandum to J. Edgar Hoover, Director, FBI (Apr. 14, 1969) (Exhibit 272). Dennis Condon’s name is written on this document. Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 150 (Feb. 21, 2002).

²⁰ Robert Walsh, *Baron Returning to Walpole for Week on Parole Violation*, BOSTON GLOBE, August 28, 1970 (Exhibit 332).

²¹ *Killer Barboza Slain*, BOSTON HERALD, Feb. 12, 1976 (Exhibit 636).

²² Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Oct. 19, 1964) (Exhibit 56); Airtel from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Oct. 19, 1964) (Exhibit 56).

²³ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Oct. 20, 1964) (Exhibit 57).

²⁴ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 10, 1965) (Exhibit 68). Due to Justice Department redactions, it is impossible to determine when this request to kill Deegan actually took place. However, because the entry regarding Deegan is made in a series of chronological entries after a March 5, 1965, entry, and before a March 8, 1965, entry, a reasonable reading of the document seems to indicate that the request took place between March 5 and 7, 1965. This would distinguish this request from a very clear request to kill Deegan made by Jimmy Flemmi and Joseph Barboza on March 9, 1965.

should be killed.”²⁵ An FBI agent who prepared a memorandum about the microphone surveillance noted that Flemmi and Barboza requested permission to kill Deegan. He also stated that mob boss Raymond “Patriarca ultimately furnished this ‘OK.’”²⁶ Perhaps as important, handwritten notes prepared by an FBI Special Agent who was monitoring the conversation between Flemmi, Barboza and Patriarca indicate that Flemmi’s motive for killing Deegan was tied to the McLean-McLaughlin gang war, and that Flemmi was particularly concerned that “Deegan fills Peter Limone’s head with all kinds of stories.”²⁷ Reporting on his contacts of the following day, FBI Special Agent H. Paul Rico wrote a memorandum explaining that an informant told him that he had just heard from Jimmy Flemmi and that Patriarca had put out the word that Deegan was to be “hit.”²⁸ On March 12, 1965, Deegan was murdered.

Recording his contacts on the day after the murder, Special Agent Rico wrote a memorandum based on information obtained from an informant. The memorandum describes the Deegan murder in detail, including information Jimmy Flemmi personally provided to an informant.²⁹ Flemmi admitted that he was one of the men who killed Deegan.³⁰ This is a matter of great importance because the previous day—the day that Deegan was murdered—Jimmy Flemmi was assigned to Special Agent Rico to be developed as an informant.³¹ Over the course of the next few weeks, at least nine descriptions of the Deegan murder were prepared by federal and state law enforcement officials. Each of these descriptions provides details of the murder substantially different than the uncorroborated testimony provided three years later by Joseph Barboza when the matter finally went to trial.³² Unfortunately for

²⁵ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, Albany, Buffalo, and Miami FBI Field Offices (Mar. 12, 1965) (Exhibit 70).

²⁶ FBI Report by Charles A. Reppucci, Special Agent, Boston FBI Field Office (July 20, 1965) (Exhibit 69).

²⁷ Handwritten Notes of Microphone Surveillance of Raymond L.S. Patriarca, (March 9, 1965) (Exhibit 967).

²⁸ Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 72). This information has been characterized as believable and coming from a credible source in a position clearly to have heard what was communicated. Interview with John Durham, Special Attorney, District of Massachusetts, U.S. Dept. of Justice, and Gary Bald, Special Agent in Charge, Baltimore FBI Field Office (Dec. 2, 2002). There is, however, some confusion on the point of whether Patriarca provided his assent on March 9, 1965, and at least one FBI document states that Barboza and Flemmi were told to check with Gennaro Angiulo before taking any action.

²⁹ Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 77).

³⁰ *Id.* The informant was Flemmi’s associate.

³¹ Memorandum from H.E. Campbell, Inspector, to James L. Handley, Special Agent in Charge, Boston FBI Field Office (June 10, 1965) (Exhibit 74).

³² For a more complete review of contradictory information, refer to Statement of Captain Joseph Kozlowski (March 12, 1965) (Exhibit 76); Boston Police Department Report (Mar. 14, 1965) (Exhibit 79); Statement by Thomas F. Evans, Lieutenant, Chelsea Police Department (Mar. 14, 1965) (Exhibit 80); Massachusetts State Police Report by Richard J. Cass, Detective Lieutenant Inspector, to Daniel I. Murphy, Captain of Detectives (Mar. 15, 1965) (Exhibit 81); Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 19, 1965) (Exhibit 84); Memorandum from [Redacted], Special Agent, to Special Agent in Charge, Boston FBI Field Office (Apr. 6, 1965) (Exhibit 85); Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 24, 1965) (Exhibit 86); Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, New Haven, New York, and Washington FBI Field Offices (May 7, 1965) (Exhibit 96); Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 9, 1965) (Exhibit 102) (On April 25, 2002, the Department of Justice released an unredacted version of this document to the Committee. That document revealed that “BS-919-PC [Jimmy Flemmi] has murdered Frank Benjamin, John Murray, George Ashe, Joseph Francione, Edward ‘Teddy’ Deegan, and ‘Iggy’ Lowry[.]” The document further divulged

the defendants at that trial, relevant information was covered up when the government failed to disclose to all defendants that exculpatory information had been captured by the FBI's microphone surveillance of Raymond Patriarca. Perhaps more unfortunate, federal officials failed to step in and prevent Joseph Barboza from committing perjury, notwithstanding the fact that it was a death penalty case.³³ Four men received the death penalty, and two men received a sentence of life in prison.³⁴

3. *Developing the Flemmi Brothers as Informants*

It is difficult to assess the Deegan murder and prosecution without an understanding of how federal law enforcement was attempting to develop Jimmy and Stephen Flemmi as criminal informants.³⁵ The following is a brief chronological description of efforts known to the Committee to obtain the services of the Flemmi brothers as informants during the 1960s:

November 1964—Stephen Flemmi was first targeted as an informant for the FBI's Boston office's bank robbery squad.³⁶

March 9, 1965—FBI Director Hoover was informed by memorandum that Jimmy Flemmi was targeted to be a Top Echelon informant.³⁷ He was also told that Flemmi had murdered three individuals, one of whom was an FBI informant.³⁸ This was the same day that Flemmi and Barboza asked Raymond Patriarca for permission to kill Teddy Deegan.

March 12, 1965—Jimmy Flemmi was assigned to Special Agent Rico to be developed as an informant by Special Agent Rico.³⁹

March 12, 1965—Teddy Deegan was murdered.

April 5, 1965—Jimmy Flemmi gave Rico information.⁴⁰

that Flemmi feels that the McLaughlin group will try to kill him.); Memorandum from Helen Hatch, Correlator, to Special Agent in Charge, Boston FBI Field Office (June 14, 1965) (Exhibit 104).

³³There is some evidence that a small subset of this information was made available to two lawyers who represented defendants in the Deegan case. It is fair to say, however, that no one was exposed to the cumulative weight of all of the different pieces of evidence. More important, it is certain that attorneys for at least four defendants were not permitted to review any information obtained by microphone surveillance of Raymond Patriarca. Thus, witness Joseph Barboza could not be effectively impeached, nor could alternative theories of the murder be properly explored.

³⁴Those convicted were: Henry Tameleo (death), Louis Greco (death), Ronald Cassesso (death), Peter Limone (death), Joseph Salvati (life), and Roy French (life).

³⁵On December 2, 2002, it became clear that the Committee had not been furnished the informant file of Stephen Flemmi. This seemed to come as a surprise to Justice Department Task Force Supervisor John Durham. Justice Department officials pointed out at this meeting that the file was sealed by Judge Wolf in *U.S. v. Salemme*. This observation ignored Judge Wolf's request that the Justice Department work with the Committee to permit the Committee access to documents important to its investigation. Letter from the Honorable Mark L. Wolf, District Judge, United States District Court for the District of Massachusetts, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Jan. 11, 2002) (Appendix I).

³⁶FBI Office of Professional Responsibility Report by Joshua Hochberg and Charles S. Prouty (Aug. 13, 1997) (Appendix II).

³⁷Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 9, 1965) (Exhibit 71).

³⁸*Id.*

³⁹Memorandum from H.E. Campbell, Inspector, to James L. Handley, Special Agent in Charge, Boston FBI Field Office (June 10, 1965) (Exhibit 74).

⁴⁰Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (Apr. 9, 1965) (Exhibit 90); Letter from John H. Durham, Special Attorney, and Donald K. Stern, U.S. Attorney, District of Massachusetts, U.S. Dept. of Justice, to John Cavicchi, Attorney (Dec. 19, 2000) (Exhibit 928). Flemmi was contacted at least

Continued

June 4, 1965—Director Hoover made an inquiry about Jimmy Flemmi.⁴¹

June 8, 1965—Rico talked to Jimmy Flemmi about financial payments.⁴²

June 9, 1965—Director Hoover's office was informed by memorandum that Jimmy Flemmi had committed seven murders, including the Deegan murder, "he is going to continue to commit murder[,]" but "the informant's potential outweighs the risk involved."⁴³

June 10, 1965—Memorandum indicating that Jimmy Flemmi was assigned to Rico on March 12, 1965.⁴⁴

September 15, 1965—Jimmy Flemmi was closed as an informant due to a crime.⁴⁵

November 3, 1965—FBI Director Hoover's office was informed by memorandum that Stephen Flemmi was targeted as an informant.⁴⁶

February 7, 1967—Stephen Flemmi began to work for the FBI as a Top Echelon Criminal Informant.⁴⁷

February 14, 1967—Stephen Flemmi was approved as a Top Echelon informant.⁴⁸

Early 1967—Stephen Flemmi was used to convince Barboza to testify.⁴⁹

June 20, 1967—FBI Director Hoover's office was informed by memorandum that Stephen Flemmi was developed by Rico and Condon and used in interviews with Joseph Barboza.⁵⁰

June 23, 1967—FBI senior official Cartha DeLoach was told that Special Agents Rico and Condon developed Stephen Flemmi.⁵¹

March 29, 1968—FBI Director Hoover's office was informed by memorandum that Special Agent Rico used Stephen Flemmi to develop Barboza.⁵²

four additional times as an informant by Special Agent Rico. *Id.* Those dates of contact were May 10, 1965, June 4, 1965, July 22, 1965, and July 27, 1965. *Id.*

⁴¹ Memorandum from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office (June 4, 1965) (Exhibit 100).

⁴² Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (June 8, 1965) (Exhibit 101).

⁴³ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 9, 1965) (Exhibit 102).

⁴⁴ Memorandum from H.E. Campbell, Inspector, to James L. Handley, Special Agent in Charge, Boston FBI Field Office (June 10, 1965) (Exhibit 74).

⁴⁵ Letter from John H. Durham, Special Attorney, and Donald K. Stern, U.S. Attorney, District of Massachusetts, U.S. Dept. of Justice, to John Cavicchi, Attorney (Dec. 19, 2000) (Exhibit 928).

⁴⁶ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Nov. 3, 1965) (Exhibit 111).

⁴⁷ Interview with John Durham, Special Attorney, District of Massachusetts, U.S. Dept. of Justice, and Gary Bald, Special Agent in Charge, Baltimore FBI Field Office (Dec. 2, 2002).

⁴⁸ FBI Office of Professional Responsibility Report by Joshua Hochberg and Charles S. Prouty (Aug. 13, 1997) (Appendix II).

⁴⁹ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141).

⁵⁰ *Id.*

⁵¹ FBI Memorandum from J.H. Gale to Cartha DeLoach (June 23, 1967) (Exhibit 144).

⁵² Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 29, 1968) (Exhibit 213).

May 27, 1968—The Deegan murder trial began.⁵³

As this chronology makes clear, the effort to develop both Jimmy and Stephen Flemmi began either before or at the time of the Deegan murder. Moreover, despite the fact that the FBI knew that Jimmy Flemmi had committed seven murders—including the Deegan murder—and was “going to continue to commit murder,” Director Hoover and his staff decided to use Flemmi as an informant. On this point there was no ambiguity: just three days before Jimmy Flemmi was assigned to Special Agent Rico to be developed as an informant, Director Hoover’s office was notified that Flemmi was a murderer.⁵⁴ Indeed, Jimmy Flemmi’s proclivity to commit serious crimes was not in doubt. One memorandum from the head of the FBI’s Boston office to Director Hoover discusses how Flemmi had been paid \$1,500 for disposing of the body of a girl.⁵⁵ The following month, on May 5, 1965, microphone surveillance of Raymond Patriarca showed that Flemmi, and Joseph Barboza and Ronald Cassesso, asked Raymond Patriarca for permission to murder a man named Sammy Linden.⁵⁶ The fact that Flemmi was a murderer, and planned to commit additional murders, went unremarked. Apparently, the decision had already been made to take on murderers as informants. Flemmi was eventually closed as an informant not because of concerns that he would commit additional homicides. Rather, in September of 1965, he was charged by state authorities with “Assault with a Dangerous Weapon with Intent to Murder” after he had shot another person. The FBI decided to close him as an informant “[i]n view of the fact that informant is presently a local fugitive” and “any contacts with him might prove to be difficult and embarrassing.”⁵⁷

By the time of the Deegan murder prosecution, both Jimmy and Stephen Flemmi had been active federal law enforcement informants, and both men were known to have been involved in a number of homicides. This fact is important when assessing the efforts to develop Joseph Barboza as a cooperating witness in 1967 and 1968. Jimmy Flemmi had been closed because he might become embarrassing. It would take another three decades for Stephen Flemmi to become one of the greatest embarrassments in FBI history.

4. *The Deegan Murder Prosecution*

Teddy Deegan was murdered on March 12, 1965. Two and a half years later, Joseph “The Animal” Barboza testified about the Deegan murder before a Suffolk County grand jury.⁵⁸ Immediately afterwards, a number of individuals were arrested.⁵⁹ The following year, on May 27, 1968, the Commonwealth of Massachusetts began

⁵³ Docket Sheet, *Commonwealth v. French* (Suffolk County Super. Ct. May 27, 1968) (Exhibit 235).

⁵⁴ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 9, 1965) (Exhibit 71).

⁵⁵ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agent in Charge, New York FBI Field Office (Apr. 13, 1965) (Exhibit 89).

⁵⁶ FBI Report by Charles A. Reppucci, Special Agent, Boston FBI Field Office (July 20, 1965) (Exhibit 94).

⁵⁷ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Sept. 15, 1965) (Exhibit 109).

⁵⁸ Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) (Exhibit 171).

⁵⁹ Memorandum from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Oct. 25, 1967) (Exhibit 172).

the prosecution of six individuals implicated by Joseph Barboza for the murder of Teddy Deegan.⁶⁰ Barboza testified about the details of the conspiracy to murder Deegan, how the homicide was carried out,⁶¹ and about promises or inducements offered to him by the federal government.⁶² After a two month trial, all six defendants were convicted: four men received the death penalty and two individuals were sentenced to life in prison.⁶³

Any assessment of the Deegan murder prosecution must focus on five areas. First, did Barboza's pretrial dealings with federal law enforcement officials inspire confidence that he was telling the truth?⁶⁴ Second, was his grand jury testimony consistent with facts known to law enforcement personnel. Third, did the story told at trial by Joseph Barboza bear any relationship to information in possession of federal and state law enforcement officials about who really killed Deegan? Fourth, did law enforcement personnel obtain false testimony from Anthony Stathopoulos, who had accompanied Deegan to the location where Deegan was ultimately murdered. Fifth, did those who provided testimony give an accurate summary of what Barboza had been promised in exchange for his testimony. Each of these areas raises significant questions, and now that evidence withheld from defendants at the time of trial has been obtained by the Committee, it appears that Barboza's story was so different from information known to federal officials that he should never have been permitted to testify. At the very least, contemporaneous FBI interviews should have reflected a vigorous effort to determine why Barboza's story differed from what was already known

⁶⁰ Docket Sheet, *Commonwealth v. French* (Suffolk County Super. Ct. May 27, 1968) (Exhibit 235). The six individuals tried for the murder of Deegan were: Wilfred "Roy" French, Peter Limone, Henry Tameleo, Ronald Cassesso, Louis Greco, and Joseph Salvati.

⁶¹ Judge Margaret Hinkle provides a concise summary of the testimony:

Barboza testified at trial that about January 20, 1965, Limone saw Barboza and offered him a "contract" to kill Deegan for \$7,500, and told Barboza that this had been approved by the "office." Barboza spoke with Tameleo a few days later to confirm that the "office" approved of the murder. Tameleo agreed to it. Some weeks later, after securing the assistance of others, some of whom would become Limone's codefendants at trial, Barboza reported to Limone that the murder would occur soon but that Stathopoulos would be involved. According to Barboza, Limone agreed to add \$2,500 if Stathopoulos were also killed. Barboza confirmed with Tameleo that it was okay to kill Stathopoulos as well. According to the evidence presented at trial, the murder of Deegan was carried out by Barboza, Cassesso, Salvati, French, Grieco [sic] and others, not including Limone. Stathopoulos escaped. Some time later, Barboza testified, he met with Limone, who paid him for the Deegan murder.

Commonwealth v. Limone, Cr. No. 32367, 32369, 32370, slip op. at *3 (Suffolk County Sup. Ct., Jan. 5, 2001) (Exhibit 931). If this testimony were true, there would have been no need for Flemmi and Barboza to travel to Providence to seek permission to kill Deegan in March of 1965.

⁶² Barboza told the Deegan jury that he was "hoping for a break," that he was hoping that his testimony "would be taken into consideration," and "the only promise that has been made in regards to [his testimony] is that the FBI will bring it to the attention of the Judge." Trial Transcript, *Commonwealth v. French* (Suffolk County Super. Ct. July 2, 1968) at 4456, 4460 (Exhibit 243). He also said his wife and child would be protected. *Id.* at 4652. When asked if "they made more promises than what you've told us about," Barboza answered, "No, sir." *Id.* at 4653. Thus testimony, which does not appear to be accurate, will be discussed later in this report.

⁶³ *Deegan Trial: 4 Get Chair, 2 Life; Judge Hails Jury*, BOSTON GLOBE, Aug. 1, 1968 (Exhibit 247). The death penalty sentences were later changed to life in prison after the Supreme Court determined that the death penalty was unconstitutional in *Furman v. Georgia*, 408 U.S. 238 (1972).

⁶⁴ The FBI had opened a file on Edward Deegan in 1965. Thus, at the time that Joseph Barboza was beginning to cooperate with federal officials, those officials had available to them information collected at the time of the Deegan murder. In addition, federal prosecutors had been furnished with information that contradicted the version of events provided by Barboza in 1967 and 1968. See FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (January 14, 1966).

to federal law enforcement. This is particularly important because, just after the Deegan murder, FBI Director Hoover or his staff thought that the information contained in the logs of microphone surveillance of Raymond Patriarca was significant.⁶⁵ Nevertheless, the FBI interviews obtained by the Committee show that no effort was made to compare what Barboza was prepared to say about the Deegan murder with information already in the FBI's possession. As Jack Zalkind, the prosecutor in the Deegan case, told the Committee:

I must tell you this, that I was outraged—outraged—at the fact that if [the exculpatory documents] had ever been shown to me, we wouldn't be sitting here . . . I certainly would never have allowed myself to prosecute this case having that knowledge. No way. . . . That information should have been in my hands. It should have been in the hands of the defense attorneys. It is outrageous, it's terrible, and that trial shouldn't have gone forward.⁶⁶

* * *

[Barboza's FBI handlers] knew from the beginning that Joe Barboza was lying. . . . They have a witness that they knew was lying to me, and they never told me he was lying. . . . [The FBI] figured, well, let's flip Joe, and let Joe know that we're not going to push him on his friend Jimmy Flemmi. So they let Joe go on and tell the story, leaving out Jimmy Flemmi; and then Jimmy Flemmi is allowed to go on and be their informer.⁶⁷

The evidence is overwhelming that Barboza should not have been permitted to testify in the Deegan murder prosecution. Nevertheless, it was his uncorroborated testimony that was used in the Deegan prosecution that led to four men being sentenced to death and two others receiving life sentences.

i. Barboza's Pretrial Dealings with Federal Officials

Prior to the Deegan trial, Barboza, in effect, told federal law enforcement that he was not going to tell the truth about the Deegan murder and that at least some federal officials were unconcerned that he would commit perjury in a death penalty case. Nevertheless, federal law enforcement officials continued to supply him with money and protection. Incredibly, federal officials even considered using him in California as a Top Echelon informant,⁶⁸ and he may have been encouraged by federal law enforcement personnel to violate the terms of his state parole by returning to Massachusetts.⁶⁹

⁶⁵ Document is retained by the Justice Department.

⁶⁶ "Investigations of Allegations of Law Enforcement Misconduct in New England," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 21, 34 (May 11, 2002) (testimony of Jack Zalkind).

⁶⁷ *Id.* at 52, 68–69, 76.

⁶⁸ Memorandum from [Redacted] to J. Edgar Hoover, Director, FBI (Apr. 14, 1969) (Exhibit 272). The FBI historically categorized its informants according to their potential productivity. The most potentially productive informants were designated as Top Echelon informants. See generally RALPH RANALLI, *DEADLY ALLIANCE* (HarperTorch 2001) (provides an analysis of the FBI's informant program).

⁶⁹ Robert Walsh, *Baron Returning to Walpole for Week on Parole Violation*, *BOSTON GLOBE*, August 28, 1970 (Exhibit 332).

The first recorded meeting between Barboza and FBI Special Agents Rico and Condon, which took place on March 8, 1967, was probably the most significant.⁷⁰ Barboza informed the agents that he would consider providing information about murders committed in the Boston area, but that “he would never provide information that would allow James Vincent Flemmi [sic] to ‘fry[.]’”⁷¹ Barboza was true to his word. Shortly thereafter, he did begin providing information. Two questions are of particular concern to the Committee: (1) why did Barboza provide information? and (2) how did he succeed in keeping his friend and confederate Jimmy Flemmi out of his story about the Deegan murder? Part of the answer can be found in a document that recommends a pay increase for Special Agents H. Paul Rico and Dennis Condon. Approximately three months after Rico and Condon began working to develop Barboza’s testimony, the head of the FBI’s Boston office sent the following “Recommendation for Quality Salary Increase” to Washington:

Realizing the potential that [redacted name] might one day be victim of a homicide, SAs Condon and Rico have continued vigorous attempts to obtain additional high quality LCN sources. Accordingly, BS 955 C-TE [Stephen Flemmi] was developed by these agents and via imaginative direction and professional ingenuity utilized said source in connections with interviews of JOSEPH [BARBOZA], a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement representatives in this area to be the most dangerous individual known. SAs Rico and Condon contacted [Barboza] in an effort to convince him he should testify against the LCN. [Barboza] initially declined to testify but through utilization of BS 955 C-TE, the agents were able to convey to [Barboza] that his present incarceration and potential for continues incarceration for the rest of his life, was wholly attributable to LCN efforts directed by Gennaro J. Angiulo, LCN Boston head. As a result of this information received by [Barboza] from BS 955 C-TE, said individual said he would testify against the LCN members.⁷²

This memorandum appears to contradict testimony to the Committee provided by former Special Agent Dennis Condon who, when asked whether he used a particular informant, either human or

⁷⁰ In a memorandum to Attorney General Elliot L. Richardson, H. Paul Rico, Dennis Condon, and Edward Harrington were praised for developing Joseph Barboza as a successful witness. Memorandum from Henry E. Petersen, Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, to Elliot L. Richardson, Attorney General, U.S. Dept. of Justice (July 24, 1973) (Exhibit 576).

⁷¹ FBI Interview Report by Dennis M. Condon and H. Paul Rico, Special Agents, Boston FBI Field Office (Mar. 8, 1967) (Exhibit 131). When asked about Barboza’s statement, Condon said: “I don’t have any recollection of the conversation; but reading what I have in front of me, I think it’s an accurate portrayal of what he said.” Condon further indicated that the interview summary of Barboza’s comment that he would not provide information that would allow Jimmy Flemmi to “fry” was “prepared by both of us [Rico and Condon], contemporaneously.” Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 81–82 (February 21, 2002). When asked whether the plain meaning of Barboza’s statement was that Barboza would not provide information that would put Flemmi “in a situation where he would face a capital murder charge,” Condon replied “I would have to say that that looks like a true statement.” *Id.* at 83.

⁷² Memorandum from SAC, Boston, to Director, FBI (June 20, 1967).

electronic, to help obtain Barboza's testimony, replied "No, I didn't."⁷³

Thus, at the time Special Agents H. Paul Rico and Dennis Condon first began to develop Barboza's testimony, two facts were critical. First, Barboza said that he would not provide information that would allow Jimmy Flemmi to "fry." Second, Stephen Flemmi, Jimmy Flemmi's brother, was used by Rico and Condon to convince Barboza to testify.⁷⁴ It is highly unlikely that Stephen Flemmi would have allowed himself to be used by the FBI if his efforts led his brother to the electric chair. With all these facts in mind, it is almost inconceivable that at least Special Agents Rico and Condon were not aware that Barboza was going to commit perjury at the Deegan trial.⁷⁵ Furthermore, Rico and Condon were aware that Barboza had consulted with Jimmy Flemmi between the FBI's first and second interviews of Barboza. Barboza had gone so far as to tell Flemmi that he was thinking of having one of his gang members corroborate his testimony. Flemmi told Barboza that he thought obtaining corroboration was an excellent idea.⁷⁶ This was of particular importance at the time because the head of the FBI's Boston office informed Washington that "[t]his office is aware of the distinct possibility that [Barboza], in order to save himself from a long prison sentence, may try to intimidate [Patrick] Fabiano into testifying to something that he may not be a witness to."⁷⁷ It is not explained how the FBI had come to this conclusion. Nevertheless, the consultation between Barboza and Flemmi, and Barboza's exploration of having someone corroborate his testimony, provide additional reasons for concern with his testimony.

It is also particularly revealing that in the many thousands of pages of documents produced to the Committee by the Justice Department, no one appears to have confronted Barboza with the obvious question: given the convincing information that Flemmi committed the Deegan murder and that Barboza told the FBI he would not give the government information about Flemmi that would allow Flemmi to "fry," why should the FBI not conclude that you are going to commit perjury when you testify.

When former FBI Special Agent Dennis Condon testified, he made it clear that he did not remember anyone asking the critical

⁷³ Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 8 (February 21, 2002). Condon was asked whether he knew the identity of "BS 955 C-TE" and he stated that he did not. *Id.*

⁷⁴ It is worth noting that, the previous year, Dennis Condon was "involved in a substantive error write-up case when a review of an informant file disclosed an instance of failure to properly disseminate information obtained from the informant." Memorandum from S.R. Burns to Mr. Walsh (Oct. 22, 1975) at 19 (Exhibit 123). Nevertheless, a few weeks after Condon and Rico first interviewed Barboza, Condon's participation in the informant program was considered outstanding. *Id.* (Exhibit 135). When testifying in *U.S. v. Salemme*, former Special Agent Condon insisted that at the time Frank Salemme was apprehended in New York in November 1972, he had no idea Stephen Flemmi was an informant. Given the personnel records indicating that Rico and Condon used Flemmi to obtain Joseph Barboza's testimony, this does not seem credible.

⁷⁵ Critical information about the Deegan murder had also been provided to a number of federal prosecutors. See, e.g., FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116); Memorandum from Walter T. Barnes and Edward F. Harrington, Assistant U.S. Attorney, to Henry Petersen, Chief, Organized Crime and Racketeering Section (June 6, 1967) (document retained by the Justice Department). Therefore, it is not implausible that federal prosecutors also realized that Barboza would not tell the truth at the Deegan murder trial.

⁷⁶ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 28, 1967) (Exhibit 134).

⁷⁷ *Id.*

questions about Jimmy Flemmi and his participation in the Deegan murder:

Rep. LATOURETTE: The question I have is, if you follow this time line—and the time line is Rico receives confidential information that Barboza and Flemmi want to kill Deegan [and the Patriarca bug confirms a] confidential conversation where they overhear a conversation that Barboza and Flemmi say they actually go down and say they want to take out Teddy. The Department has that. Were you aware of that in 1965 or 1966?

Mr. CONDON: Not to my knowledge.

Rep. LATOURETTE: But when this prosecution memo that you have in front of you was written, apparently the Assistant United States Attorneys are able to ferret that out. Was that disclosed to you?

Mr. CONDON: That's correct.

Rep. LATOURETTE: I think the difficulty I had is this, and it came about when Mr. Wilson was asking questions before. When Mr. Barboza is being prepared as a witness in the Deegan trial, which we now know was testimony that wasn't right in terms of who he fingered, were you ever in a meeting with Mr. Rico or the representatives of the state prosecuting authority when somebody asked him or confronted him about the discrepancies in versions that the Department had information on, both the Rico documents and also these tapes from Patriarca's place of business?

Mr. CONDON: Not to my memory, no.

Rep. LATOURETTE: Were you ever in a meeting where anybody asked him, where was Jimmy Flemmi?

Mr. CONDON: I don't remember ever being in such a meeting.⁷⁸

ii. Barboza's Grand Jury Testimony

Joseph Barboza testified before a Suffolk County grand jury on October 25, 1967.⁷⁹ The information he provided was contradicted by information already known to federal officials, which rendered Barboza's testimony suspect. It is inconceivable that federal law enforcement officials did not know what Barboza was going to tell the grand jury and what he did tell the grand jury. Therefore, it is very likely that at least some federal officials understood that Barboza had committed perjury before the Suffolk County grand jury and that he was prepared to provide testimony at trial that was not true.⁸⁰

⁷⁸ Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (February 21, 2002).

⁷⁹ Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) (Exhibit 171).

⁸⁰ Barboza was in federal custody, his interviews were conducted in the presence of federal law enforcement officials, he was the subject of intense interest at the highest levels of the Justice Department, he was a witness in a federal trial, and his testimony in one case would undoubtedly have ramifications for other cases. In order for Barboza to be a federal witness, and to merit protection by the federal government, federal officials would have had to have known what his testimony would have been regarding the various matters about which he was prepared to testify. They would also have had to know the details of his testimony in order to de-

Barboza did not provide any information to the grand jury about Jimmy Flemmi and Flemmi's involvement in the Deegan murder. More important, however, he explained that he and Ronald Cassesso planned to take credit for the murder, and that the only person besides himself who knew that "the Office" was involved in the prospective murder was Ronald Cassesso.⁸¹ Barboza was asked "So the only one at this time that knew you were doing this for the Office was Ronnie Cassesso?" Barboza replied: "Yes."⁸² This testimony completely avoids the fact that Barboza and Flemmi had visited Raymond Patriarca three days before the murder to seek his permission to kill Deegan.⁸³ It also avoids the fact, known to the FBI and memorialized in an FBI memorandum authored by H. Paul Rico, that Jimmy Flemmi had told an informant that "Raymond Patriarca has put out the word that Edward 'Teddy' Deegan is to be 'hit' and that a dry run has already been made and that a close associate of Deegan's has agreed to set him up."⁸⁴ Thus, Barboza's story about how he and Cassesso were the only two who knew that Patriarca had been consulted was obviously false to anyone who had knowledge of the FBI's microphone surveillance of Patriarca and who had access to the informant to whom Jimmy Flemmi had confided. This information was not provided to the Suffolk County District Attorney's Office, and consequently it was not available at a time when Barboza's credibility was being assessed.

The chronology of events provided by Barboza to the grand jury also makes it plain that he was committing perjury. Barboza stated that Peter Limone first approached him in February of 1965 to hire Barboza to kill Deegan.⁸⁵ And yet when Barboza and Flemmi approached Patriarca in March to seek Patriarca's permission for the Deegan murder, all indications are that this was the first time the subject had come up. Furthermore, the microphone surveillance captured no discussion about Limone's involvement. Indeed, one FBI memorandum suggests that Patriarca told Barboza and Flemmi to consult with Gennaro Angiulo about their intention to kill Deegan. It is highly unlikely that if Limone had already offered money to have Deegan killed, that either Barboza or Flemmi would have asked Patriarca for permission to kill Deegan and failed to have told him that they had already been contracted to kill Deegan.

It is also curious that Barboza testified that Peter Limone had offered money for Barboza to kill Deegan. According to documents provided by the Justice Department to the Committee, Limone and Deegan appeared to be on good terms. A few months before Limone allegedly hired Barboza to kill Deegan, Limone gave Deegan two

velop their own cases and investigations. Moreover, federal officials had information that Raymond Patriarca was involved in the Deegan murder, and it is inconceivable that this would not have been the subject of intense interest.

⁸¹ Suffolk County Grand Jury Testimony of Joseph Barboza 115 (Oct. 25, 1967) (Exhibit 171).

⁸² *Id.*

⁸³ FBI Report by Charles A. Reppucci, Special Agent, Boston FBI Field Office (July 20, 1965) (Exhibit 69).

⁸⁴ Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 72).

⁸⁵ Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) (Exhibit 171).

guns.⁸⁶ The following month, after hearing that Jimmy Flemmi wanted to murder Deegan, Limone warned Deegan about the murder threat.⁸⁷ More important, three days before Deegan was killed, Flemmi told Raymond Patriarca that “Deegan fills Limone’s head with all kinds of stories.”⁸⁸ Thus, Flemmi seemed to be indicating to Patriarca that one reason to kill Deegan was that he was close to Limone and that he was the source of “all kinds of stories.”

Barboza also provided information that makes it appear that his testimony was coached. He stated that before Deegan was murdered he was at a bar called the Ebb Tide. He noted that the bar was very crowded, and he states that when he left the Ebb Tide with the people that he implicated in the Deegan murder, others also left the bar at the same time.⁸⁹ He recalled that the others who left at the same time he did were men named Femia, Chiampa and Imbruglia. It is difficult to believe that Barboza would be able to recall, more than two and a half years after the fact, the precise names of those who coincidentally left the bar at the same time that he did. More to the point, however, was the existence of various reports and informant descriptions of how Femia, Chiampa and Imbruglia were involved in the Deegan murder and had actually been part of the conspiracy to kill Deegan. Thus, when Barboza was falsely describing how one set of people was involved in the Deegan murder, he also attempted to provide an explanation that diminished the importance of information known to a number of federal and state law enforcement officials. Thus, if any police reports about the Deegan murder had been admitted into evidence at trial, Barboza would have had an explanation regarding those who left the Ebb Tide at the same time that he did and, coincidentally, whose names appeared in contemporaneous police reports about who participated in the Deegan murder. It appears that Barboza’s testimony about how Femia, Chiampa and Imbruglia coincidentally left the Ebb Tide at the same time that he did could only have been given if police reports and informant information had been shared with Barboza prior to his testimony.

There can be no doubt that if federal officials were privy to Barboza’s grand jury testimony they would have known that he had lied, and that he was preparing to commit perjury in the Deegan capital murder prosecution. Furthermore, the fact that federal officials remained with Barboza when he spoke to local prosecutors indicates that they were aware of what he was preparing to tell the grand jury.

⁸⁶ Memorandum from SAC, Boston, to Director, FBI and SAC, New Haven (September 17, 1964) (Exhibit 52).

⁸⁷ Memorandum from H. Paul Rico to Redacted Name (October 18, 1964) (Exhibit 56) (stating “Flemmi advised that Deegan owes Flemmi’s brother, Stevie, some money, and that he told him once to get the money up. He has not gotten the money up, and Flemmi wants to kill Deegan and wanted the informant to go with him on the ‘hit.’”); Memorandum from SAC, Boston, to Director, FBI (October 20, 1964) (Exhibit 57) (stating “Immediately after [Jimmy] Flemmi left, he [Limone] called Deegan and told him that Flemmi was looking for him, allegedly for a \$300.00 loan which Deegan owes Flemmi. Deegan denied any such loan. Therefore, they were of the opinion that Flemmi was out to kill Deegan.”)

⁸⁸ Handwritten Notes of Raymond Patriarca Microphone Surveillance (March 9, 1965) (Exhibit 967)

⁸⁹ Suffolk County Grand Jury Testimony of Joseph Barboza 119 (Oct. 25, 1967) (Exhibit 171).

iii. Barboza's Testimony Compared to Preexisting Information

Even before Teddy Deegan was murdered, the FBI had information that could have led to the conclusion that there would soon be a murder and that Jimmy Flemmi would be involved. As early as October 18, 1964, the head of the FBI office in Boston was told by Special Agent H. Paul Rico that Jimmy Flemmi wanted to kill Deegan.⁹⁰ Four months earlier, FBI Director Hoover or his staff was given specific information by the Boston FBI office that “[Jimmy] Flemmi is suspected of a number of gangland murders and has told the informant of his plans to become recognized as the No. One ‘hit man’ in this area as a contract killer.”⁹¹ Just days before this memorandum to FBI Director Hoover, Special Agent Condon wrote a memorandum stating: “Flemmi told him [an informant] that all he wants to do now is kill people, and that it is better than hitting banks. . . . Informant said, Flemmi said that he feels he can now be the best hit man in this area and intends to be.”⁹² Later in the year, Flemmi killed an FBI informant by stabbing him fifty times and then, in a surfeit of enthusiasm, shooting him.⁹³

In the days before Deegan was murdered, the FBI was aware of a great deal of activity relating to Deegan. Between March 5 and March 7, 1965, Jimmy Flemmi appears to have met with Raymond Patriarca to obtain permission to kill Deegan.⁹⁴ A couple of days later, on March 9, 1965, Jimmy Flemmi and Joseph Barboza asked Raymond Patriarca for permission to kill Deegan because “Deegan is a nasty sneak and should be killed.”⁹⁵ According to one summary of microphone surveillance, Patriarca gave his permission for Deegan to be murdered.⁹⁶ The following day, according to a memorandum by Special Agent Rico, an “[i]nformant advised that he had just heard from ‘Jimmy’ Flemmi that Flemmi told the informant that Raymond Patriarca has put out the word that Edward ‘Teddy’ Deegan is to be ‘hit’ and that a dry run has already been made[.]”⁹⁷ That same day, Director Hoover or his staff was informed that “Flemmi came to Providence to contact [Patriarca] . . . to get the ‘OK’ to kill Eddie Deegan[.]”⁹⁸ Two days later, Barboza, Flemmi and others murdered Teddy Deegan. Earlier that day,

⁹⁰ Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Oct. 19, 1964) (Exhibit 56).

⁹¹ Memorandum from the Boston FBI Field Office to J. Edgar Hoover, Director, FBI (June 4, 1964) (Exhibit 50).

⁹² Memorandum from Dennis Condon, Special Agent, Boston FBI Field Office (May 25, 1964) (Exhibit 48).

⁹³ See Letter from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Jan. 8, 1965) (Exhibit 60).

⁹⁴ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 10, 1965) (Exhibit 68).

⁹⁵ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, Albany, Buffalo, and Miami FBI Field Offices (Mar. 12, 1965) (Exhibit 70); Memorandum from Helen Hatch, Correlator, to Special Agent in Charge, Boston FBI Field Office (June 14, 1965) (Exhibit 104).

⁹⁶ *Id.*

⁹⁷ Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 72). The identity of this informant was not provided to Congress. However, according to the Justice Department, the information is described as “believable.” It also came from a clearly credible source who was in a position to have heard what was happening at the time. Interview with John Durham, Special Attorney, District of Massachusetts, U.S. Dept. of Justice, and Gary Bald, Special Agent in Charge, Baltimore FBI Field Office (Dec. 2, 2002).

⁹⁸ Airtel from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Mar. 10, 1965) (Exhibit 73).

Jimmy Flemmi had been assigned to be developed by Special Agent Rico as an informant.⁹⁹

When Barboza did testify at the Deegan murder trial, he explained that he was approached by Peter Limone on approximately January 20, 1965, and that Limone offered him \$7,500 to kill Teddy Deegan.¹⁰⁰ Barboza also testified that “the Office” had approved the murder, that Henry Tameleo was involved in the murder conspiracy, and that Tameleo was involved as early as January of 1965.¹⁰¹ The FBI’s microphone surveillance did not provide evidence of a January approach to Barboza, but it did provide evidence that Barboza and Jimmy Flemmi approached Patriarca in March of 1965 to seek his permission to kill Deegan. Thus, the dates do not match, and Barboza’s story that he was approached with an offer of money for a contract assassination is diametrically opposed to the reality—captured on tape—that Barboza and Flemmi sought permission to murder Deegan because he was an “arrogant, nasty sneak and should be killed.”¹⁰² Federal law enforcement officials, the only individuals with access to this microphone surveillance information, appear to have purposefully kept this information from the prosecutors who tried the case and sought the death penalty for the six defendants.

Perhaps more important, however, is the fact that the motive for the murder advanced by Barboza was different from the motive captured by the FBI’s microphone surveillance. Barboza testified that Peter Limone offered \$7,500 for him to murder Deegan because of a burglary that Deegan had committed:

[T]he Popoulo [sic] home was broken into and from eighty to eighty-two thousand dollars was taken out of the house, and Harold Hannon, Wilfred Delaney and Teddy Deegan were supposed to be in on the score. Peter Limone said they would pay any amount of money to get these three people killed. I think it was before that that Hannon and Delaney were found floating in the river. He said they wanted to get Deegan for that and said that Deegan had killed Sacremone [sic] from Everett[.]¹⁰³

Over two years earlier, however, the FBI’s microphone surveillance of Raymond Patriarca captured the following exchange:

⁹⁹ Memorandum from H.E. Campbell, Inspector, to James L. Handley, Special Agent in Charge, Boston FBI Field Office (June 10, 1965) (Exhibit 74).

¹⁰⁰ If Barboza had been telling the truth, nearly two months of planning went into the Deegan murder conspiracy. It is interesting to note that when former FBI Special Agent Dennis Condon was asked about the disguise that Barboza testified was worn by Joseph Salvati, Condon stated: “I’m not of the opinion that they think that far ahead into those matters. I just don’t think so. I don’t think there’s that much advance planning.” Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 209 (Feb. 21, 2002).

¹⁰¹ Trial Transcript, *Commonwealth v. French*, (Suffolk County Super. Ct. 1968); *Commonwealth v. Limone*, Cr. No. 32367, 32370, slip op. at *3 (Suffolk County Sup. Ct., Jan. 5, 2001) (Exhibit 931).

¹⁰² Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, Albany, Buffalo, and Miami FBI Field Offices (Mar. 12, 1965) (Exhibit 70).

¹⁰³ Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) (Exhibit 171). In 1966, the FBI prepared a memorandum for federal prosecutors that described the deaths of Harold Hannon and Wilfred Delaney. It stated that Hannon “was tortured by Edward Bennett, the Flemmi brothers—Jimmy and Stevie Flemmi—in an effort to ascertain where the proceeds of the \$30,000 burglary was [sic] that he and Delaney committed on Carmen Puopolo, a bookmaker from Everett, Massachusetts. During the torturing, Hannon was apparently killed, as the medical report reflected that he had died by suffocating.” FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116).

Jimmie [Flemmi] tells Raymond they are having a problem with Teddy Deegan (ph). Teddy did what he did to press some other people. Jimmie says that the kid [Rico Sacrimone] did not have to be killed. . . . Bobby Donati is friendly with Rico Sacrimone and Deegan is looking for an excuse to whack Donati. . . . Deegan thinks Donati is trying to set him up for Buddy McLean. Jimmie says Deegan is an arrogant, nasty sneak. Deegan fills Peter Limone's head with all kinds of stories.¹⁰⁴

These two rationales for the Deegan murder are fundamentally incompatible. The fact that Jimmy Flemmi was being protected, and the fact that Barboza's testimony bore no relationship to evidence in the hands of the FBI at the time of the Deegan trial are clear indications that federal law enforcement was aware that Barboza's story about the Deegan murder was false.

In the days following the Deegan murder, a great deal of information about the crime was developed. The following is a brief description of the information in the hands of federal and state law enforcement officials after Deegan was murdered. Every piece of information contradicted Barboza's ultimate trial testimony.¹⁰⁵ Indeed, the defendants filed a motion requesting police reports¹⁰⁶ and this motion was denied,¹⁰⁷ presumably with the concurrence of the prosecution. The Committee recognizes that discovery requirements were very different in 1965 than today and that state prosecutors were involved in responding to the motion. Nevertheless, this was a death penalty case and prosecutors should have disclosed this information to the defendants.

The following information existed at the time of the Deegan murder prosecution:

- On March 12, 1965, Captain Joseph Kozlowski prepared a statement indicating, among other things, that "the man in the back [of the car used to take people to the Deegan murder scene] had dark hair with a bald spot in center of head."¹⁰⁸
- On March 13, 1965, Special Agent Rico reported that an informant told him who killed Deegan and how he was killed.¹⁰⁹ Rico filed a report and said, among other things, that Jimmy Flemmi

¹⁰⁴Handwritten Notes of Microphone Surveillance of Raymond L.S. Patriarca, March 9, 1965) (Exhibit 967).

¹⁰⁵The Justice Department has not made its position officially known on this point. There is an indication that two defense attorneys in the Deegan case may have been provided some information from the microphone surveillance of Raymond Patriarca during the course of another trial involving the prosecution of Raymond Patriarca for conspiracy to murder Willie Marfeo. However, the Justice Department has not furnished the Committee with the information provided to the two defense attorneys. In any event, there is no indication that defense counsel for defendants Joseph Salvati, Peter Limone, or Louis Greco were ever provided information from the Patriarca microphone surveillance prior to the Deegan trial.

¹⁰⁶Motion of the Defendant for the Production of Police Department Reports, *Commonwealth v. Salvati* (Suffolk Super. Ct.) (Exhibit 184). The defendants also requested information regarding "promises, rewards and inducements." It appears from the record before the Committee that the jury was not given an accurate indication of what Barboza had been promised and what he had been given.

¹⁰⁷Docket Sheet, *Commonwealth v. French* (Suffolk County Super. Ct. Apr. 18, 1968) (Exhibit 220).

¹⁰⁸Statement of Captain Joseph Kozlowski (Mar. 12, 1965) (Exhibit 76).

¹⁰⁹Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 77). This information was provided by an associate of Jimmy Flemmi's. Interview with John Durham, Special Attorney, District of Massachusetts, U.S. Dept. of Justice, and Gary Bald, Special Agent in Charge, Baltimore FBI Field Office (Dec. 2, 2002).

was involved in the murder. This information contradicts Barboza's trial testimony.

- On March 14, 1965, a Boston Police Department report was filed.¹¹⁰ The information recorded contradicts Barboza's trial testimony. This report is of particular interest because nine years later Joseph Barboza told federal officials that Romeo Martin was murdered because he was an informant in the Deegan case and provided the information that was the basis of the March 14, 1965, Boston Police Department report.¹¹¹ An FBI document which describes the Martin homicide is heavily redacted and it is not possible to ascertain what was known to the FBI.¹¹² Nevertheless, it appears that Barboza himself committed the Romeo Martin murder,¹¹³ thereby killing one of the eyewitnesses to the Deegan murder.
- A report, which indicates that Jimmy Flemmi was involved in the Deegan murder, was filed by the Chelsea Police a couple of days after the murder.¹¹⁴ The information recorded contradicts Barboza's trial testimony.
- On March 15, 1965, a report was filed with the Massachusetts State Police.¹¹⁵ Again, the report indicated that Jimmy Flemmi was involved in the murder. The information recorded contradicts Barboza's trial testimony.
- On March 19, 1965, FBI Director Hoover or his staff was provided information about the Deegan murder.¹¹⁶ Hoover was told that Jimmy Flemmi was involved in the murder. The information recorded contradicts Barboza's trial testimony.
- On March 23, 1965, an informant advised the FBI that "Barbosa [sic] claims that he had shot Teddy Deegan with a .45 gun."¹¹⁷ The information recorded contradicts Barboza's trial testimony.
- On March 24, 1965, Director Hoover or his staff was provided more information about the Deegan murder.¹¹⁸ Again, the information provided contradicts Barboza's trial testimony.
- On May 7, 1965, Director Hoover or his staff was told that microphone surveillance of Raymond Patriarca captured the following: "information had been put out to the effect that Barboza

¹¹⁰ Boston Police Department Report (Mar. 14, 1965) (Exhibit 79).

¹¹¹ Memorandum from SAC, Butte, Montana, to Director, FBI, (February 1, 1974) (Exhibit 596).

¹¹² See, e.g., FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116) (Barboza admits to a role in the Martin homicide); see also VINCENT TERESA, MY LIFE IN THE MAFIA 248 (Doubleday & Company, Inc. 1973).

¹¹³ Memorandum from SAC, Butte, Montana, to Director, FBI, (February 1, 1974) (Exhibit 596).

¹¹⁴ Statement by Thomas F. Evans, Lieutenant, Chelsea Police Department (Mar. 14, 1965) (Exhibit 80).

¹¹⁵ Massachusetts State Police Report by Richard J. Cass, Detective Lieutenant Inspector, to Daniel I. Murphy, Captain of Detectives (Mar. 15, 1965) (Exhibit 81).

¹¹⁶ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 19, 1965) (Exhibit 84).

¹¹⁷ Memorandum from [Redacted], Special Agent, to Special Agent in Charge, Boston FBI Field Office (Apr. 6, 1965) (Exhibit 85).

¹¹⁸ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 24, 1965) (Exhibit 86).

was with Flemmi when they killed Edward Deegan.”¹¹⁹ This contradicts Barboza’s trial testimony.

- On June 9, 1965, FBI Director Hoover or his staff was told that Jimmy Flemmi had killed Teddy Deegan.¹²⁰
- On January 14, 1966, the Boston FBI Office prepared a memorandum for the U.S. Attorney in Boston. It described gangland murders and provided information about the Deegan homicide that contradicted Barboza’s trial testimony.¹²¹

Notwithstanding the information developed by law enforcement about the Deegan murder, nothing happened for over two years. The break in the case came when Joseph Barboza was arrested in late 1966 for a weapons offense.¹²² Facing a lengthy prison sentence, he began to cooperate with law enforcement officials. On January 25, 1967, Barboza received a relatively light sentence for the weapons offenses.¹²³ The following month, Stephen Flemmi was taken into the federal Top Echelon informant program,¹²⁴ and on March 8, 1967, he began to work with FBI Special Agents H. Paul Rico and Dennis Condon in an effort to develop Barboza to testify.¹²⁵

In the period between Barboza’s first recorded meeting with FBI Agents Rico and Condon and his testimony in the Suffolk County prosecution for the Deegan murder, Barboza met with either Rico, Condon, or Edward Harrington at least 41 times.¹²⁶ When Barboza finally did testify at the Deegan trial between July 2 and July 11, 1968, there were a number of discrepancies between information available to law enforcement at the time of the Deegan murder and Barboza’s testimony. The three most significant involve the absence of Jimmy Flemmi, the chronology and origin of the murder plot, and the use of a .45 caliber weapon to kill Deegan.

It is particularly significant that the documents produced to the Committee by the Justice Department do not show a single instance of Barboza being confronted with the discrepancies between the record compiled by law enforcement and his proposed testimony. When Dennis Condon was asked why he did not question Barboza about the discrepancies in his story, Condon offered no explanation, stating, “I can’t answer that. I can’t answer that.”¹²⁷ The majority of significant evidence, however, was in the posses-

¹¹⁹ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, New Haven, New York, and Washington FBI Field Offices (May 7, 1965) (Exhibit 96).

¹²⁰ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 9, 1965) (Exhibit 102).

¹²¹ FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116).

¹²² James Southwood, *A Letter from Barboza: Why I Decided to Tell All*, BOSTON HERALD TRAVELER (Exhibit 122).

¹²³ U.S. Dept. of Justice Identification Record (Mar. 2, 1976) (Exhibit 129); Cornelius Moynihan, *Two Others Convicted*, BOSTON GLOBE, Jan. 26, 1967 (Exhibit 129).

¹²⁴ FBI Office of Professional Responsibility Report by Joshua Hochberg and Charles S. Prouty (Aug. 13, 1997) (Appendix II). Flemmi was first targeted as an informant in November of 1964. *Id.*

¹²⁵ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141).

¹²⁶ See Exhibits 131–134, 138, 140, 141, 144, and 146 (dated between March 8, 1967, and July 2, 1968). Rico and Condon also were present for meetings between Joseph Barboza and state investigators and prosecutors.

¹²⁷ Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 117–118 (Feb. 21, 2002).

sion of federal authorities. For example, FBI officials were aware of microphone surveillance information, and state officials were not aware of relevant microphone surveillance evidence.

The absence of Jimmy Flemmi from Barboza's testimony is the single greatest indication that Barboza was not telling the truth. Perhaps as important, however, was the addition of Joseph Salvati to the fact pattern as described by Barboza at trial.¹²⁸ Salvati's introduction to the list of defendants is significant because just before the crime was committed an eyewitness—who also happened to be a police officer—saw some of the men who killed Deegan in the vicinity of the crime.¹²⁹ The eyewitness described a man who had an appearance similar to Jimmy Flemmi's. Thus, Barboza was confronted with a dilemma: minutes before Deegan was murdered, someone saw a man with Barboza who looked like Jimmy Flemmi near the scene of the crime. Perhaps more important, this was recorded in a police report.¹³⁰ Jimmy Flemmi was Barboza's best friend and was a frequent accomplice in criminal endeavors. Thus, it would not have been unusual for Flemmi to have been with Barboza. Barboza solved this dilemma by adding Joseph Salvati to his story and then testifying that Salvati was wearing a disguise which included, among other things, a wig that made him appear bald.¹³¹ As described by Barboza, the disguise made Joe Salvati—who in real life looked nothing like Jimmy Flemmi¹³²—resemble Flemmi. For the jury, of course, this might have been believable, but only because the jury had received no evidence that Jimmy Flemmi was involved in the crime or that Flemmi had a motive to kill Deegan. For the federal law enforcement officers who had access to the contemporaneous evidence that Flemmi was part of the Deegan homicide, however, this story should have indicated that Barboza was not telling the truth.¹³³

Barboza was also aware that he had been observed leaving a popular night club with a number of individuals just before Deegan was killed. In all of the written reports compiled by law enforcement at the time of the Deegan murder, no one had placed Salvati in the night club and no one indicated he left with Barboza. Barboza solved this inconsistency by testifying that Salvati was not with him because he had instructed Salvati to warm up the car.

¹²⁸At the time of the Deegan murder prosecution, Joseph Salvati owed a debt of money to Joseph Barboza. Barboza, who was a professional loanshark, had loaned Salvati \$400. At the time of Barboza's arrest in 1966, he sent two associates to collect outstanding debts in order that he would have sufficient money to meet bail requirements. Salvati was unable to pay. Barboza sent his associates back a second time, an altercation resulted, and Salvati said he would not repay the money owed to Barboza. The following year, Barboza retaliated by putting Salvati into the Deegan murder conspiracy. Interview with Joseph Salvati (March 27, 2001); Alan Jehlen, *Two Say Grieco [sic] Innocent of Deegan Murder*, PEABODY TIMES, June 9, 1971 (Exhibit 402).

¹²⁹Massachusetts State Police Report by Richard J. Cass, Detective Lieutenant Inspector, to Daniel I. Murphy, Captain of Detectives (Mar. 15, 1965) (Exhibit 81).

¹³⁰Statement of Captain Joseph Kozlowski (March 12, 1965) (Exhibit 76).

¹³¹Trial Transcript, *Commonwealth v. French* (Suffolk County Super. Ct. July 2, 1968) at 3367 (Exhibit 243).

¹³²Flemmi was balding, and Salvati had thick, dark hair styled in such a way that it was noticeable.

¹³³It is worth noting that Joseph Salvati's attorney for the Deegan murder trial told the Committee that Al Farese, the partner of Joseph Barboza's attorney, told him that Jimmy Flemmi was the bald man at the Deegan murder, not Joseph Salvati. This is important because Farese's partner was John Fitzgerald, who represented Joseph Barboza. Farese also learned about Deegan being in trouble on March 12, 1965, before the Chelsea Police Department, which suggests an important familiarity with key participants. Interview with Chester Paris, attorney for Joseph Salvati during the Deegan trial (Aug. 6, 2002).

However, his testimony had him sending Salvati to warm the car up over ninety minutes before he left the night club. Again, the jury might well have believed this story in the absence of the withheld exculpatory evidence. Had all evidence been provided to the defendants, however, Barboza's testimony would have been far less credible.

Another significant discrepancy between information available to federal law enforcement and Barboza's trial testimony is whether Barboza actually shot Deegan. Less than two weeks after Deegan was murdered, an informant told the FBI that "Barbosa [sic] claims that he had shot Teddy Deegan with a .45 caliber gun."¹³⁴ Two years later, on March 21, 1967, Barboza was interviewed by Special Agents Rico and Condon.¹³⁵ Although the documents provided to the Committee are heavily redacted, a significant focus of this interview was the Deegan murder and Joseph Barboza's knowledge about the Deegan murder.

On the same day that Barboza was interviewed, March 21, 1967, a Boston newspaper indicated that Barboza appeared before a federal grand jury.¹³⁶ Responding to this activity, a memorandum drafted in the name of the FBI Director states the following:

A review of the Bureau records reveals that no investigation of [Barboza] has ever been conducted by your office. In view of the current circumstances, the Bureau should be cognizant of all background information. Therefore, you should submit to the Bureau an investigative report per instructions set out under the Criminal Intelligence Program containing all background and identifying data available.¹³⁷

The Boston office complied with the instructions from Washington when Thomas Sullivan transmitted a memorandum to Washington which summarizes information about Joseph Barboza. In this memorandum, the Boston office re-states the information from two years earlier: "[An informant states that] Barboza claims that he shot Teddy Deegan with a .45 caliber gun. Barboza indicated that Roy French was with Deegan and another individual when Deegan was shot by Barboza and two other individuals, one of whom the informant believes was Romeo Martin."¹³⁸

Barboza's grand jury testimony states not only that he did not shoot Deegan but also that he did not see who shot Deegan.¹³⁹ Obviously, this is a significant factual discrepancy that should have been lost on no one. Furthermore, it is telling that law enforcement permitted Barboza the luxury of saying that he neither pulled the

¹³⁴Memorandum from [Redacted], Special Agent, to Special Agent in Charge, Boston FBI Field Office (Apr. 6, 1965) (Exhibit 85).

¹³⁵Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 28, 1967) (Exhibit 132).

¹³⁶Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Mar. 21, 1967) (Exhibit 133).

¹³⁷Airtel from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office (May 24, 1967) (Exhibit 140).

¹³⁸FBI Report by Thomas Sullivan, Special Agent, Boston FBI Field Office (July 18, 1967) (Exhibit 149). When Barboza met with Anthony Stathopoulos at Barnstable County Jail on September 8, 1967, Barboza told him that on the night on March 12, 1965, he had a .45 caliber gun. This statement was made in the presence of a number of law enforcement officials. Interview with Anthony Stathopoulos (February 21, 2003).

¹³⁹Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) at 123-25 (Exhibit 171).

trigger nor saw who did pull the trigger. It is also important to note that Barboza was important enough in Washington that a request was made to have information about him transmitted to headquarters. This appears to contradict individuals who have told this Committee that federal prosecutors and investigators were interested only in the murder of Willie Marfeo and the resulting federal prosecution.¹⁴⁰

iv. Anthony Stathopoulos and the Deegan Murder Prosecution

At the time of his death, Teddy Deegan was attempting to commit a robbery. He was accompanied to the intended site of the crime by Wilfred “Roy” French and Anthony Stathopoulos.¹⁴¹ After Deegan and French walked into an alley, Stathopoulos saw flashes and heard shots. Shortly thereafter, Stathopoulos, who was sitting in an automobile, saw French and another man exit the alley. At the same time he also heard someone still in the alley say “get him too.” Stathopoulos immediately drove away and, after a short delay, went to the home of attorney Al Farese. Shortly thereafter, Farese called the Chelsea Police Department. Later that night, Stathopoulos and Farese went to the site of Deegan’s murder and Stathopoulos identified the body.

The day following Deegan’s murder, Stathopoulos—this time accompanied by attorney John Fitzgerald—went to the Chelsea Police Department. He was shown photographs of Roy French, Joseph Barboza, Jimmy Flemmi, and Ronald Cassessa.¹⁴² The police also mentioned an individual named Freddie Chiampa. Stathopoulos asked how the police were able to know the identities of those who committed the Deegan murder and he was told that an informant had provided the information. Stathopoulos was also told that the individuals whose pictures had been provided were the ones that he had to watch out for.

Prior to the Deegan murder trial, Joseph Barboza told Stathopoulos on two occasions that he would protect Jimmy Flemmi. The more significant of the two times was on September 8, 1967, when Stathopoulos was taken by law enforcement officials to meet with Joseph Barboza in Barnstable County Jail. When Stathopoulos arrived at the jail, he was met by FBI Special Agents H. Paul Rico and Dennis Condon. During the course of the meeting between Barboza and Stathopoulos, which was conducted in the presence of law enforcement officials including Rico and Condon, Barboza explained that he was keeping Jimmy Flemmi out of the Deegan murder because Flemmi had been good to him in the past.

Stathopoulos testified for the prosecution in the Deegan murder trial. Prior to his testimony, Stathopoulos was asked to identify Louis Greco as one of the men at the scene of the Deegan murder.

¹⁴⁰ See Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (Feb. 21, 2002); “The California Murder Trial of Joe ‘The Animal’ Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. (Feb. 14, 2002) (testimony of Judge Edward Harrington); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001); “The Justice Department’s Use of Informants in New England,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. (Dec. 5, 2002) (testimony of Paul Markham).

¹⁴¹ Interview with Anthony Stathopoulos (February 21, 2003). Unless there is a citation to the contrary, the information provided in this section is derived from this interview.

¹⁴² Stathopoulos does not recall whether he was shown a photograph of Romeo Martin.

According to Stathopoulos, prosecutor Jack Zalkind pressed him to testify that Louis Greco was the other man who came out of the alley with Roy French. Stathopoulos told Zalkind that he was not able to identify the second man. Zalkind then informed Stathopoulos that he did not have to be 100% certain, but that 99% certainty was sufficient. Stathopoulos was aware that the individual who came out of the alley was carrying a gun in his right hand, and that he did not have a limp. Later, Stathopoulos was told that Greco was left-handed, and that he did have a limp. When Stathopoulos asked Zalkind how he would be able to identify Greco in court he was provided the order of seating for the defendants. In Stathopoulos's opinion, both Jack Zalkind and Detective John Doyle knew that Louis Greco was not at the scene of the Deegan murder, but "they wanted him bad."

Stathopoulos did testify that he saw Greco come out of the alley. He knew at the time that this was not truthful testimony; nevertheless, he had been led to believe by law enforcement officials that Greco would kill him if he were not locked up. Perhaps more important, Stathopoulos thought it prudent simply to do what he had been asked to do.¹⁴³

v. Federal Involvement in the Deegan Prosecution

The Deegan murder prosecution was conducted by the office of the Suffolk County District Attorney. Thus, it was not a federal criminal prosecution. During the course of its investigation, the Committee received testimony that federal personnel had little to do with the two Suffolk County murder prosecutions.¹⁴⁴ Documents produced to this Committee, however, suggest that FBI agents collaborated with local authorities as part of the prosecution. For example, on August 9, 1967, the head of the FBI's Boston office sent the following urgent teletype regarding the DiSeglio murder prosecution to FBI Director Hoover:

In statement to press, District Attorney Byrne stated that this tremendous penetration into the La Cosa Nostra and the hoodlum element was effected through the outstanding investigative efforts of the FBI and his office. As a matter of information, this entire case which was presented to the grand jury by DA Byrne was developed through the efforts and able handling of Barboza by SA H. Paul Rico and Dennis M. Condon of the Boston office. They also cooperated

¹⁴³ Stathopoulos's description of his Deegan murder trial testimony is similar to a description provided by John "Red" Kelly about his testimony in a murder trial which involved former Special Agent H. Paul Rico. "Red" Kelly testified that he was asked to commit perjury by Special Agent Rico in a Rhode Island murder trial. He testified that he did commit perjury, and Special Agent Rico was also found to have committed perjury in that trial. When asked why he committed perjury, Kelly stated "Well, my life was in their hands." Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763). Thus, Kelly and Stathopoulos provided similar explanations for the perjury that was committed in two different trials.

¹⁴⁴ See Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (February 21, 2002); "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. (Feb. 14, 2002) (testimony of Judge Edward Harrington); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001); "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. (Dec. 5, 2002) (testimony of Paul Markham); "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 220-21 (May 3, 2001) (testimony of H. Paul Rico).

fully with DA Byrne in the preparation of this matter for the grand jury. I know that this indictment would not have been possible in any sense of the word if it were not for the efforts of these agents and the FBI at Boston. . . . I further recommend that Supervisor John F. Kehoe who supervised this entire program and was involved deeply in the developments and the planning relative to Barboza and the matters attendant to this indictment be strongly commended for his excellent supervision.¹⁴⁵

As this document makes clear, Special Agents Rico and Condon were so involved in the state case that they participated in the state grand jury preparation. Thirty-five years later, the FBI has redacted information pertaining to grand jury appearances. Nevertheless, it appears that the FBI Director himself or his staff was being kept informed of state grand jury developments in this case.¹⁴⁶

It is worth noting that federal law enforcement officials closely involved with Barboza—H. Paul Rico, Dennis Condon, Paul Markham, and Edward Harrington—told the Committee that they did not pay close attention to the Deegan trial.¹⁴⁷ Given the extraordinary importance of the Deegan trial—it was a death penalty case involving the alleged right hand men of New England organized crime bosses Raymond Patriarca and Gennaro Angiulo—it is hard to believe that federal officials failed to pay attention to Barboza’s testimony. Moreover, FBI Director Hoover’s office was notified of the Deegan murder trial result on the same day the verdict was returned.¹⁴⁸ A claim of disinterest in the Deegan murder trial could have the effect of distancing federal law enforcement officials from Barboza and his perjurious testimony.

At the time of the Deegan murder prosecution, Special Agent Condon testified under oath that he was not a major figure in developing Barboza’s testimony regarding the Deegan murder:

Mr. BALLIRO: And is it fair to say that you and Agent Rico have been major figures, so to speak, with regard to the investigations surrounding the information furnished by Mr. [Barboza]?

Mr. CONDON: No, sir.

Mr. BALLIRO: It is not?

Mr. CONDON: No, sir.

¹⁴⁵ Teletype from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Aug. 9, 1967) (Exhibit 151).

¹⁴⁶ The date of this document indicates that it refers to the DiSeglio murder prosecution.

¹⁴⁷ See Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (Feb. 21, 2002); “The California Murder Trial of Joe ‘The Animal’ Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. (Feb. 14, 2002) (testimony of Judge Edward Harrington); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001); “The Justice Department’s Use of Informants in New England,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. (Dec. 5, 2002) (testimony of Paul Markham); “The FBI’s Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati,” *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 220–21 (May 3, 2001) (testimony of H. Paul Rico).

¹⁴⁸ Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (July 31, 1968) (Exhibit 248).

Mr. BALLIRO: Well, you have been participating in it, is that correct?

Mr. CONDON: As it pertains to Federal matters, yes.

Mr. BALLIRO: But not as it pertains to State matters?

Mr. CONDON: We have not been the principal figures, no, sir.

Mr. BALLIRO: I see. But you have been part of it, is that correct?

Mr. CONDON: Yes, sir.¹⁴⁹

* * *

Mr. BALLIRO: All right. Since Mr. [Barboza] has been testifying on State matters rather than Federal matters, do you say that you have no longer been concerned about the purity of testimony that he might give in a State court, a Federal court or any kind of court?

Mr. CONDON: I am always concerned about the purity of testimony on the part of any witness involving any matter that I am concerned with.¹⁵⁰

When the Committee interviewed Mr. Condon, he suggested that local prosecutors developed the Deegan case, and that the FBI did not take credit for developing the Deegan prosecution:

Mr. WILSON: Is it fair for us to characterize the FBI as having taken a great deal of credit for the Deegan prosecution?

Mr. CONDON: No, I don't believe so. I don't believe so.¹⁵¹

These answers, however, conflict with the FBI's own internal documents, where the FBI not only took credit for playing a role in developing Barboza's testimony, but also awarded bonuses and commendations for the successful effort to develop the Deegan case. For example, on August 5, 1968, just five days after the Deegan defendants were convicted, FBI Director J. Edgar Hoover sent the following note to Dennis Condon:

In recognition of the excellent fashion in which you performed in the investigation of a local murder case involving Roy French and others, I am pleased to commend you. You were highly instrumental in the development of principal witnesses and, through your effective testimony at the trial, all the subjects were successfully prosecuted. I do not want the occasion to pass without conveying my appreciation to you.¹⁵²

Condon was commended for his work both in the Deegan murder investigation and for his trial testimony, and there can be little

¹⁴⁹ Trial Transcript, *Commonwealth v. French* (Suffolk County Super. Ct. July 19, 1968) at 5810-11 (Exhibit 244).

¹⁵⁰ *Id.*

¹⁵¹ Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 210 (Feb. 21, 2002).

¹⁵² Letter from J. Edgar Hoover, Director, FBI, to Dennis Condon, Special Agent, Boston FBI Field Office (Aug. 5, 1968) (Exhibit 251).

doubt that the dozens of times Special Agents Rico and Condon visited Joseph Barboza resulted in a great deal of discussion about the Deegan case.¹⁵³ Indeed, Barboza himself testified that he discussed the Deegan case with law enforcement, including the FBI, eight or nine times before he told the entire story about the Deegan killing.¹⁵⁴

It is particularly important to compare Condon's testimony before the Committee with the teletype to FBI Director Hoover that explains how Special Agents Rico and Condon worked so closely with the local prosecutors that they "cooperated fully with DA Byrne in the preparation of this matter [presumably the DiSeglio case] for the grand jury."¹⁵⁵ There appears to be no doubt whatsoever that the FBI played the pivotal role in the state's case. There is no indication that FBI personnel did not play as significant a role in assisting the state in the Deegan case. Indeed, a letter from federal prosecutor Edward Harrington to Gerald Schur, who ran the Justice Department's Witness Protection Program from Washington, D.C., indicates just how involved federal law enforcement was in the Deegan case and its aftermath:

It is requested that employment be procured for Lawrence P. Hughes. Mr. Lawrence P. Hughes . . . has been kept in protective custody by the Suffolk County District Attorney's Office as a potential witness for the last two months. Hughes furnished information relative to a meeting in the woods in the Freetown, Massachusetts area between Joseph [Barboza] Baron and Frank Davis, an associate of Raymond L.S. Patriarca, relative to negotiations for a change of testimony on the part of Baron to release the organized crime figures that he had testified against. Hughes also was present when F. Lee Bailey turned over \$800 to Baron and told him (Baron), 'The people would pay the \$500,000 but he would not be the intermediary.' Hughes will testify to this in a hearing relating to a motion for a new trial which has been filed by six Cosa Nostra members who had previously been convicted for the first-degree murder of Boston gangster Edward Deegan. The Deegan murder case, one of the most significant organized crime convictions in New England, resulted in four other defendants being sentenced to death and the two other defendants being sentenced to life imprisonment. Although tried in the state court, the conviction resulted from the joint cooperation of federal and state authorities in Massachusetts. . . . The Suffolk County District Attor-

¹⁵³ See, e.g., Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (July 31, 1968) (Exhibit 248); Letter from J. Edgar Hoover, Director, FBI, to H. Paul Rico, Special Agent, Boston FBI Field Office (Aug. 5, 1968) (Exhibit 251); Memorandum from S.R. Burns to Mr. Walsh (Oct. 22, 1975) (Exhibit 254); Special Investigative Division Note (Oct. 4, 1968) (Exhibit 255); see also Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 29, 1968) (Exhibit 213) ("SA Condon's ability to develop Joseph . . . Barboza described as the most vicious criminal in New England and one whom law enforcement generally felt could never be compromised, required months of labor, seven days weekly, coupled with intelligence, aggressiveness and foresight.")

¹⁵⁴ Trial Transcript, *Commonwealth v. French*, at 4655 (Suffolk County Super. Ct. July 2, 1968) (Exhibit 243).

¹⁵⁵ Teletype from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Aug. 9, 1967) (Exhibit 151).

ney's Office, which has been extremely cooperative with the Strike Force, is requesting Strike Force assistance in obtaining employment for Hughes until this matter is resolved.¹⁵⁶

As this request indicates, Harrington not only states that the Deegan trial convictions resulted from the joint cooperation of federal and state authorities in Massachusetts, but that federal officials were eager to help obtain a job for Lawrence Hughes at a time when it was anticipated that Hughes would testify in response to a motion for a new trial for the Deegan defendants. Support by federal officials would permit state officials to deny that they had provided Hughes any financial or job-related assistance in advance of his testimony.

In addition to the request regarding Hughes, there are also numerous indications that the FBI played the key role in preparing Joseph Barboza to testify in the Deegan case.¹⁵⁷ As one senior FBI supervisor wrote to Deputy Director Cartha DeLoach in referring to the "prosecutive achievement" in Boston: "[A]s a result of FBI investigation, in State court in Boston, Massachusetts, six more were convicted in the 1965 slaying of Edward Deegan. La Cosa Nostra members Henry Tameleo, Ronald Cassesso, Peter Limone, and Louis Greco were all sentenced to death while two confederates were given life sentences."¹⁵⁸ Two years later, senior FBI official Cartha DeLoach was provided additional information about the FBI's role in the Deegan murder prosecution:

With the murder conspiracy conviction of New England Mafia boss Raymond Patriarca and four other racket figures in Rhode Island on 3/27/70, it is believed appropriate to bring to your attention the truly remarkable record established by SA [Paul] Rico in organized crime investigations during recent years. The achievements in question primarily involve SA Rico's development of high-level organized crime informants and witnesses, a field in which he is most adept. SA Rico's development of Boston mobster Joseph Barboza, a vicious killer and organized crime leader in his own right, set off a chain of events which have seen the surfacing of a number of additional racket figures in New England as cooperative witnesses during the past few years. Making use of compromising information he had received from other top echelon informants he had previously turned, Rico brought Barboza to the point where he testified against Patriarca and two of his La Cosa Nostra (LCN) subordinates in a[] . . . [g]ambling case resulting in [the] conviction of all three in Boston Federal Court on 3/8/68. . . . SA Rico also induced Barboza to tes-

¹⁵⁶Memorandum from Edward F. Harrington, Attorney in Charge, Boston Field Office, Organized Crime and Racketeering Section, to Gerald Shur, Criminal Division, U.S. Department of Justice (November 16, 1970) (Exhibit 366).

¹⁵⁷*Id.*

¹⁵⁸FBI Memorandum from J.H. Gale to Mr. DeLoach (Nov. 15, 1968) (Exhibit 262). This memorandum also points to the importance the FBI attached to favorable publicity. Discussing the creation of organized crime task forces, Gale states that the "principal objection [to the Task Force concept] is that the FBI's accomplishments would be submerged in the claiming of credit by the Task Force beyond its actual contribution, and they will wind up grabbing the lion's share of favorable publicity." *Id.*

tify as the state's key witness in Massachusetts in the gang slaying of hoodlum Edward Deegan. In this case, Rico was additionally instrumental in developing a second witness, attorney John Fitzgerald, resulting in the 7/31/68 murder convictions of LCN members Henry Tameleo, Ronald Cassesso and Peter Lamone [sic], who were sentenced to death; one additional death sentence for another hoodlum, and life sentences for two others also convicted in this case.¹⁵⁹

Prior to his becoming a cooperating witness, Barboza faced lengthy prison sentences for a variety of criminal offences. As this communication makes clear, however, it was information from other Top Echelon informants that convinced Barboza to testify. Specifically, it was Stephen Flemmi who was used to convince Barboza to testify. There is no doubt that before problems were discovered, the FBI claimed credit for the Deegan murder prosecution. Later, of course, when the Deegan prosecution became the subject of controversy, this approach changed.

It is worth noting that when Judge Harrington was approaching his Senate confirmation hearings, he told the Chairman of the Senate Judiciary Committee: "As a public prosecutor, I developed such significant accomplice witnesses as Joseph [Barboza], Vincent Teresa, 'Red' Kelley, William Masiello and many others whose use as witnesses I always made available to local prosecution authorities. Cooperation with local law enforcement was my hallmark."¹⁶⁰ Nine days later, Harrington again wrote to the Judiciary Committee Chairman: "I never used an accomplice witness unless I was convinced that he was telling the truth and his testimony had been corroborated to the fullest extent possible. Nor did I ever condone any wrongdoing on any witness' part."¹⁶¹ These statements are subject to question. Barboza was made available to local authorities but, as the Deegan prosecutor testified before the Committee:

I must tell you this, that I was outraged—outraged—at the fact that if [the exculpatory documents] had ever been shown to me, we wouldn't be sitting here . . . I certainly would never have allowed myself to prosecute this case having that knowledge. No way. . . . That information should have been in my hands. It should have been in the hands of the defense attorneys. It is outrageous, it's terrible, and that trial shouldn't have gone forward.¹⁶²

Barboza was never directly confronted with his reluctance to provide information that would have Jimmy Flemmi "fry," the discrepancy between the information obtained by microphone surveillance

¹⁵⁹ FBI Memorandum from J.H. Gale to Cartha DeLoach (March 31, 1970) (Exhibit 308).

¹⁶⁰ Letter from Edward F. Harrington, Of Counsel, Sheridan, Garrahan & Lander, to Senator Joseph R. Biden, Jr., Chairman, Committee on the Judiciary (Jan. 20, 1988) (Exhibit 813).

¹⁶¹ Letter from Edward F. Harrington, Of Counsel, Sheridan, Garrahan & Lander, to Senator Joseph R. Biden, Jr., Chairman, Committee on the Judiciary (Jan. 29, 1988) (Exhibit 813).

¹⁶² "Investigations of Allegations of Law Enforcement Misconduct in New England," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 25-26, 48 (May 11, 2002) (testimony of Jack Zalkind). Former Special Agent Dennis Condon was informed that the FBI maintained a file on the Deegan murder. He indicated that he had not seen any documents prepared by former Special Agent Rico about the Deegan murder. When asked "do you wish that you had been made aware of those documents[.]" Condon replied "I would prefer that I had been aware of them, yes." Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 212-214 (Feb. 21, 2002).

and his assertion that he was approached in January of 1965 and offered a contract to kill Deegan, and his inexplicable failure to include Raymond Patriarca as a co-conspirator in the Deegan homicide. Deegan murder prosecutor Jack Zalkind told the Committee that: “[t]he information that Joe Barboza had told an FBI agent that he would not implicate Jimmy Flemmi in a murder case is the most exculpatory piece of evidence that anyone could have.”¹⁶³ Also, singling out Red Kelley as a successful accomplice witness carried a certain danger in that the Rhode Island Supreme Court vacated a homicide conviction when it found that FBI Special Agent H. Paul Rico had suborned perjurious testimony from “Red” Kelley and had himself committed perjury in a Rhode Island murder trial.¹⁶⁴

Barboza’s testimony about promises made to him also presents an interesting window into the relationship between federal law enforcement personnel and Joseph Barboza. During the Deegan trial, Barboza told the jury that he was “hoping for a break,” and that he was also hoping that his testimony “would be taken into consideration.”¹⁶⁵ He further stated that “the only promise that has been made in regards to [his testimony] is that the FBI will bring it to the attention of the Judge.”¹⁶⁶ He also said that his wife and child would be protected.¹⁶⁷ When asked if “they made more promises than what you’ve told us about,” Barboza answered “No, sir.”¹⁶⁸ This testimony appears to conflict with what senior Justice Department officials in Washington knew at the time. For example, one senior official, responding to a request for money to be given to Barboza communicated the following to another senior official two years after Barboza’s testimony:

The memoranda submitted by Walter Barnes do not in my judgment support the expenditure of Nine Thousand Bucks. . . . The additional \$4,000 requested to make up the total of Nine, obviously has no support. I am bothered by the thought on this score that [Barboza], if my recollection is correct, expected a \$10,000 payment at the time his testimony was concluded.¹⁶⁹

This communication indicates that Barboza did have an expectation of more than he testified to. Indeed, in a letter to Washington, two senior prosecutors in Boston state that they:

[T]hink it is fair to state that it was agreed by all in the Department of Justice that at the time [Joseph Barboza] was released from Government protection every effort would be made to provide his [sic] with a job and an unspecified sum of money. However, in the event it was impossible to obtain a job for him because of [his] extensive

¹⁶³ *Id.* at 48.

¹⁶⁴ A more complete discussion of this matter can be found at Section II.B.7. It is worth noting that Judge Edward Harrington stated that he was not aware of the finding that former FBI Special Agent Rico had suborned perjury, and had himself committed perjury.

¹⁶⁵ *Id.* at 4456 (Exhibit 243).

¹⁶⁶ *Id.* at 4460.

¹⁶⁷ *Id.* at 4652.

¹⁶⁸ *Id.* at 4653.

¹⁶⁹ Memorandum from Henry E. Peterson, Deputy Assistant Attorney General, Criminal Division, to William Lynch, Chief, Organized Crime and Racketeering Section, (March 3, 1970) (Exhibit 295).

record (36 years old—17 in prison) and inability to do anything, it was agreed that he would be provided additional money. This position was made known to [Barboza].¹⁷⁰

While this communication does not record the amount of money Barboza expected the government to provide, it does show that there was an understanding that Barboza would receive money, and that he would perhaps need additional sums in the future.

In an interview conducted by the prosecutor who had tried the Deegan murder case, Barboza's former attorney, John Fitzgerald also confirmed that Barboza had an expectation that money would be paid to him by the federal government: "He felt that they had promised him plastic surgery, he felt that two, they had promised him a lump sum of money, he felt that three, they had promised him a job as a V.A. cook."¹⁷¹

When former Special Agent Dennis Condon was asked about promises or inducements made to Barboza, he indicated that officials in Boston would not necessarily have known about such matters. Condon was asked: "So, if the Justice Department had decided to do something specific for Barboza, you may not have known about that?" Condon replied: "True."¹⁷² Condon appears to have been aware that officials in Washington might not inform him of efforts made for Barboza that would have permitted him to testify that he was unaware of those efforts. Law enforcement personnel in Washington were aware that Condon or Rico would testify, and the purpose of their testimony would be to discuss promises made to Barboza. For example, on May 23, 1968, a memorandum was directed to FBI Director Hoover about the Deegan case and the federal personnel who would testify: "Special Agents Condon and/or Rico regarding witness [Barboza] first mentioning Deegan murder to them, referral of matter to District Attorney's office, no promises made, etc."¹⁷³

The Committee requested all documents that would provide a more complete understanding of the deal proposed by the federal government to Joseph Barboza. The Justice Department was unable to provide any such records, nor did it indicate that there were such records but that they would not be provided to Congress. Thus, it appears that the government has not kept any records of proposals regarding Barboza's post-testimony accommodations, nor do there appear to be any records of the amounts of money provided to Barboza. The failure to keep records regarding individuals placed in the Witness Protection Program is another disturbing fact uncovered by the Committee's investigation.

¹⁷⁰Memorandum from Walter T. Barnes and Edward F. Harrington, Attorneys, Organized Crime and Racketeering Section, Boston U.S. Department of Justice Field Office, to Henry E. Peterson, Deputy Assistant Attorney General, Criminal Division (June 6, 1967) (emphasis added) (Exhibit 292).

¹⁷¹Transcript of an interview conducted by Jack Zalkind and William J. Powers, Suffolk County District Attorneys Office, of John Fitzgerald (August 7, 1970) (Exhibit 324). During this interview, Fitzgerald also states that Barboza told him that federal law enforcement had agreed to pay for plastic surgery and promised him \$2,500 "for recuperating." *Id.*

¹⁷²Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 193 (February 21, 2002).

¹⁷³Document on file at the Department of Justice.

5. *The Failure to Prosecute Raymond Patriarca*

The FBI had clear information that Raymond Patriarca was complicit in the murder of Teddy Deegan.¹⁷⁴ At the time of the Deegan murder trial, federal prosecutors believed that Patriarca had played a part in the Deegan murder. As Judge Edward Harrington testified:

Judge HARRINGTON: At least two references to the Deegan murder gleaned from the [Patriarca microphone surveillance] logs were cited in the prosecution memorandum to manifest [Barboza's] veracity as a witness, namely, that he had personal access to Patriarca and would received authorizations from him, as [Barboza] was asserting.¹⁷⁵

* * *

Judge HARRINGTON: The fact that reference that Patriarca gave authority to [Barboza] to kill Deegan tended to corroborate his testimony in the federal Marfeo case because it showed two things. One, that Joseph [Barboza] had personal access to the boss of the New England Mafia. That was something that some people, including me, thought might not have been valid. The second reason why it tended to corroborate [Barboza's] testimony in the federal Patriarca case is it showed that he received authorizations to kill from Patriarca. And that, again, substantiated his testimony in the federal Marfeo case.¹⁷⁶

* * *

Mr. BURTON: Now Patriarca would have been guilty of complicity in a murder by giving permission to Barboza and Flemmi to kill Deegan.

Judge HARRINGTON: No doubt about it.

Mr. BURTON: There is no question about that.

Judge HARRINGTON: No doubt about it.

Mr. BURTON: [W]hy didn't you prosecute him for that case?

Judge HARRINGTON: The reason why we would not prosecute him for that case is because it was a murder case. But the fact that I said nothing when I did not see Patriarca's name as a defendant in the Deegan murder case proves that at that time, 5 months later, I had no memory of the one reference in 3 years of logs that I had looked at 5 months earlier.¹⁷⁷

Notwithstanding Patriarca's complicity in the Deegan murder, Patriarca was not prosecuted for this murder. Patriarca was the

¹⁷⁴ See Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, Albany, Buffalo, and Miami (Mar. 12, 1965) (Exhibit 70); Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 10, 1965) (Exhibit 73).

¹⁷⁵ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 113 (Feb. 14, 2002) (testimony of Judge Edward Harrington).

¹⁷⁶ *Id.* at 131–32.

¹⁷⁷ *Id.* at 133.

most important criminal target in New England, and one of the top criminal targets in the United States. Indeed as Judge Harrington testified, “I would have loved to have seen Patriarca charged with the murder case.”¹⁷⁸ Despite Patriarca’s importance as a target for criminal prosecution, no federal law enforcement personnel worked to convict Patriarca for the Deegan murder. Nor can these federal officials recall whether concerns were expressed about why Patriarca was not implicated by Barboza and why his failure to implicate Patriarca was not questioned.

Joseph Barboza did testify in one federal trial. When asked why a federal case was not brought for the Deegan murder, Judge Harrington replied:

Because the object of the conspiracy, the killing of Marfeo, was not completed at that time. He was killed sometime later as a result of another conspiracy. The Patriarca case and so-called Marfeo conspiracy was brought federally because the object was not attained, therefore we tried that as a travel act case in Massachusetts. Whereas in Deegan and in DeSeglio the murder was accomplished, therefore at that time it had to be a State prosecution.¹⁷⁹

The most surprising aspect of the failure to prosecute Patriarca for the Deegan murder is the absolute denials that the Deegan case was of interest to federal law enforcement. For example, Judge Harrington testified: “I discussed with Mr. Rico about Mr. Barboza, but with respect to the federal Patriarca case, not the state Deegan murder case. . . . I will say it again. I never discussed the Deegan murder case with Joseph Barboza or with Mr. Rico.”¹⁸⁰

It is difficult to believe that, as Barboza was being developed as a witness, it was not a matter of intense discussion and debate as to whether Patriarca would be brought to justice for his part in the Deegan murder. At a minimum, it is unlikely that there would have been no discussion of why Barboza was not prepared to testify about facts that federal prosecutors believed to be true, particularly when those facts would have put Raymond Patriarca into a death penalty situation. Microphone surveillance gave the FBI access to Raymond Patriarca’s confidential conversations. Indeed, it was through their bug that federal personnel were able to learn that Patriarca was involved in the Deegan murder. Thus, it is difficult to understand why Joseph Barboza did not testify truthfully regarding his visit to obtain Patriarca’s permission to kill Teddy Deegan. That testimony, however, would have implicated Jimmy Flemmi, which Barboza wanted to avoid. It defies any rational thought process to argue that federal personnel did not discuss, at length, why Barboza did not put Raymond Patriarca into what would potentially have been a death penalty situation.

6. *Post-Conviction Indications That a Grave Miscarriage of Justice Had Occurred*

Guilty verdicts were returned against Joseph Salvati, Ronald Cassesso, Louis Greco, Henry Tameleo, Roy French, and Peter

¹⁷⁸ *Id.* at 157.

¹⁷⁹ *Id.* at 187.

¹⁸⁰ *Id.* at 130–31.

Limone on July 31, 1968.¹⁸¹ Almost immediately, information began to emerge that cast doubt on the verdicts. Most of this information would not, in the normal course of events, have led to a reevaluation of the verdict without the government's direct intervention. Nevertheless, if federal or state officials were conducting themselves in good faith, particularly given the information in their possession that had been denied to the Deegan defendants, one would have thought some form of post-conviction relief might have been entertained or discussed.

The information obtained from microphone surveillance of Raymond Patriarca would have provided some indication that there were problems with the Deegan murder prosecution. On August 8, 1971, FBI Director J. Edgar Hoover informed the Attorney General that Boston Police Commissioner Edmund McNamara had requested that the Patriarca information be made available to his office.¹⁸² Suffolk County District Attorney Garrett Byrne made the same request.¹⁸³ A few days later, those requests were rejected.¹⁸⁴ Although these requests did not target information relevant only to the Deegan prosecution, the information found in the logs would have shown that Barboza had not been forthcoming at trial.

The following is a brief summary of information indicating that the Deegan verdict might have been wrong:

- According to an FBI memorandum, a couple of days after the Deegan verdict, an informant advised that on July 31, 1968, Stephen Flemmi's crime partner, Francis "Frank" Salemme, told the informant that in regards to the Deegan trial, "the District Attorney's Office had lied, the witnesses in the trial had lied and also the Feds had lied and according to the informant, the only ones that did not lie were the defendants."¹⁸⁵
- On May 4, 1970, *The Boston Globe* reported that Boston Police Detective William Stuart said that he believed Tameleo, Limone, and Greco were not involved in the Deegan murder.¹⁸⁶
- Joseph Barboza submitted an affidavit on July 28, 1970, stating that he intended to recant his Deegan trial testimony.¹⁸⁷ He said that he wished to recant "certain portions" of his testimony that related to "the involvement of Henry Tameleo, Peter J. Limone, Joseph L. Salvati and Lewis [sic] Grieco [sic] in the killing of Teddy Deegan."¹⁸⁸ It is important to note that the four names provided by Barboza were consistent with informa-

¹⁸¹ Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (July 31, 1968) (Exhibit 247); *Deegan Trial: 4 Get Chair, 2 Life; Judge Hails Jury*, BOSTON GLOBE, Aug. 1, 1968 (Exhibit 247).

¹⁸² Memorandum from J. Edgar Hoover, Director, FBI, to Attorney General, U.S. Dept. of Justice (Aug. 2, 1971) (Exhibit 403).

¹⁸³ Memorandum from J. Edgar Hoover, Director, FBI, to Attorney General, U.S. Dept. of Justice (Aug. 3, 1971) (Exhibit 405).

¹⁸⁴ Memorandum from Will Wilson, Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, to J. Edgar Hoover, Director, FBI (Aug. 6, 1971) (Exhibit 406); Memorandum from Will Wilson, Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, to J. Edgar Hoover, Director, FBI (Aug. 10, 1971) (Exhibit 407).

¹⁸⁵ Memorandum from [Redacted], Special Agent, to [Redacted], Special Agent in Charge (Aug. 2, 1968) (Exhibit 250).

¹⁸⁶ BOSTON GLOBE, May 4, 1970 (Exhibit 311). The Committee is aware that William Stuart was later implicated in the William Bennett murder.

¹⁸⁷ Jerome Sullivan, *Baron Admits Perjury in Deegan Murder Trial*, BOSTON GLOBE, July 29, 1970 (Exhibit 321); Affidavit of Joseph (Barboza) Baron (July 28, 1970) (Exhibit 321).

¹⁸⁸ *Id.*

tion already in the hands of law enforcement, and that the two names not mentioned were also consistent with information in the hands of law enforcement in that those two individuals really were involved in the murder.

- On August 27, 1970, attorney F. Lee Bailey wrote a memorandum to attorney Joseph Balliro, saying, among other things, that “[Joseph] Salvati and Louis Greco were not present at all. Further, [Henry] Tamelio [sic] and [Peter] Lemone [sic] had nothing to do with arranging Deegan’s murder nor had they any reason to believe that it was going to occur. The person sitting in the rear of the automobile which the Chelsea Police Captain saw was in fact bald and was Vincent Felemi [sic].”¹⁸⁹
- On November 9, 1970, William Geraway executed an affidavit stating that “[Barboza] admitted to me that five out of the six men he gave testimony against, four of whom are on death row, were innocent[.]” The men he included among the innocent were Henry Tameleo, Peter Limone, Louis Greco, and Joseph Salvati.¹⁹⁰
- Anthony Stathopoulos, who was present when Deegan was murdered and who was almost killed himself, executed an affidavit on January 5, 1971. It states that “[Barboza] told me that he was going to keep Flemmi out of it [the Deegan prosecution] because he said that Flemmi was a friend of his and the only one who treated him decently.”¹⁹¹
- On March 29, 1971, William Geraway executed an affidavit that says Barboza told him that Joseph Salvati had “no part in the crime whatsoever, nor any knowledge that it was to happen.”¹⁹²
- On April 16, 1971, a Boston newspaper reported that Boston Detective William Stuart swore in an affidavit that he gave evidence to John Doyle, Chief Investigator for the Suffolk County District Attorney’s office, that Louis Greco, Peter Limone, Henry Tameleo, and Joseph Salvati were innocent of the Teddy Deegan murder. Stuart said that Doyle did not care and indicated that the men were probably guilty of other crimes.¹⁹³
- Vincent Teresa, one of the most heralded cooperating witnesses in organized crime trials, wrote a book in 1973. He says that he did not think that Henry Tameleo had anything to do with the murder, and that Joseph Salvati “was just an innocent sucker who Barboza didn’t like, but he’s doing life because of what Barboza said. He never had anything to do with the hit.”¹⁹⁴
- On May 28, 1974, *The Boston Globe* reported that Anthony Stathopoulos said in an affidavit that Barboza told him he lied during the Deegan trial by omitting the name of a participant

¹⁸⁹ Memorandum from Lee Bailey to Joe Balliro (Aug. 27, 1970) (Exhibit 328).

¹⁹⁰ Affidavit of William Geraway (Nov. 9, 1970) (Exhibit 363).

¹⁹¹ Affidavit of Anthony Stathopoulos (Jan. 5, 1971) (Exhibit 375).

¹⁹² Affidavit of William Geraway (Mar. 29, 1971) (Exhibit 391).

¹⁹³ Alan Jehlen, *Byrne Had Evidence of Grieco’s [sic] Innocence*, PEABODY TIMES, Apr. 16, 1971 (Exhibit 395).

¹⁹⁴ VINCENT TERESA, MY LIFE IN THE MAFIA 248 (Doubleday & Company, Inc. 1973).

out of friendship. The article also provides information that Louis Greco and Joseph Salvati were not involved.¹⁹⁵

- Gerald Alch, a lawyer who worked with F. Lee Bailey, signed an affidavit on April 9, 1976. It was based on interviews he conducted with Joseph Barboza in Walpole Prison, and it states that Barboza testified falsely about Peter Limone because he thought he would be strengthening his position with regard to promises made to him by law enforcement officials.¹⁹⁶
- On November 29, 1976, Joseph Williams, Supervisor of the Investigation Unit, Board of Pardons prepared a memorandum for Board member Wendie Gershengorn. He states: “The ‘word’ from reputable law enforcement officers was that [Salvati] was just thrown in by Barboza on the murder because he hated subject[.]”¹⁹⁷
- Louis Greco submitted to a polygraph examination that indicated he was not at the Deegan crime scene, according to an affidavit executed by attorney Richard Barest on December 21, 1977.¹⁹⁸
- Louis Greco takes another polygraph examination on October 11, 1978, that indicates he was not in Massachusetts when Teddy Deegan was killed.¹⁹⁹
- F. Lee Bailey executed an affidavit on October 16, 1978, which indicates that of those convicted for the Deegan homicide, French and Cassesso were involved, and Tameleo and Limone were not. Barboza implicated Tameleo and Limone because he was led by various authorities to believe that in order to escape punishment of charges pending against him, he would have to implicate someone of “importance.” Barboza said that he implicated Greco because of a personal grudge.²⁰⁰
- Roy French executed an affidavit on April 27, 1983, stating that Greco, Tameleo, and Limone were not involved in the shooting of Deegan.²⁰¹
- On July 11, 1984, Ronald Cassesso told “The Review Committee” that Louis Greco was not in Massachusetts at the time of the Deegan murder.²⁰²
- In a 1993 book titled *The Godson: A True Life Account of 20 Years Inside the Mob*, Willie Fopiano stated that most of those convicted in the Deegan murder were innocent. He said Salvati

¹⁹⁵ William F. Doherty, *Pair Charge Perjury, Seek New Trial in Deegan Killing*, BOSTON GLOBE, May 28, 1974 (Exhibit 606).

¹⁹⁶ Affidavit of Gerald Alch (Apr. 9, 1976) (Exhibit 639).

¹⁹⁷ Memorandum from Joseph M. Williams, Jr., Supervisor, Warrant, Investigation Unit, to Board of Pardons, Special Attention Board Member Gershengorn (Nov. 29, 1976) (Exhibit 654).

¹⁹⁸ Affidavit of Richard Barest (Dec. 21, 1977) (Exhibit 663). Greco had also taken a polygraph in 1967 that indicated he was not involved in the Deegan homicide. *Commonwealth v. Grieco* [sic], Case No. 31601 (Suffolk County Super. Ct. Nov. 3, 1978) (Exhibit 673).

¹⁹⁹ Memorandum from Charles R. Jones, Case Review Committee, American Polygraph Association, to Whom It May Concern (Oct. 11, 1978) (Exhibit 667).

²⁰⁰ Affidavit of Francis Lee Bailey (Oct. 16, 1978) (Exhibit 668).

²⁰¹ Affidavit of Roy French (Apr. 27, 1983) (Exhibit 758).

²⁰² Letter from Ronald Cassesso to The Review Committee (July 11, 1984) (Exhibit 783).

was not involved, commenting “Salvati, who was just a doorman at an after hours joint, wouldn’t swat a mosquito.”²⁰³

- On July 30, 1993, a Detective Sergeant Bruce Holloway wrote a memorandum stating that former State Police Lieutenant Richard Schneiderhan indicated that he once heard Joseph Barboza’s lawyer, Robert Fitzgerald, say that Joseph Salvati was included as one of the defendants by Barboza to obtain revenge for a past financial debt.²⁰⁴
- Investigative reporter Dan Rea contacted John Doyle in 1993 to discuss the Deegan murder prosecution. Rea had just obtained the original copy of the Chelsea Police Report from the Deegan murder file at the Chelsea Police Department. Doyle, at the time of the Deegan homicide, was the Suffolk County District Attorney’s investigator handling the case. The exchange between Rea and Doyle went as follows:

[Doyle] said to him, what is it that you’re bothering me about now? And he said, well, he said that Chelsea police report. Yeah, there was no Chelsea police report. He said, yes, there is. As a matter of fact, I found the original Chelsea police report, and I have a copy of it. I would like to come over and show it to you and discuss it with you. I don’t want to see you. Don’t call me anymore. And that was the end of the conversation.²⁰⁵
- On July 11, 1995, James Southwood executed an affidavit which states that while preparing to write a book about Joseph Barboza in the early 1970s, Barboza said to him “Louie Greco wasn’t in the alley.”²⁰⁶
- In an April 3, 1996, letter from federal prosecutor James Herbert to Suffolk County District Attorney Ralph Martin, Herbert indicated that Anthony Ciulla, who was friendly with Barboza and sometimes acted as his driver, said that Salvati was never mentioned by Barboza in connection with the Deegan murder and as a result he concluded Salvati was not involved in the crime. Jimmy Flemmi, however, was discussed.²⁰⁷
- On February 10, 2000, FBI Agent Daniel Doherty prepared a memorandum for federal prosecutor Fred Wyshak, stating that he had interviewed John Martorano, and that Martorano had indicated that both Jimmy Flemmi and Joseph Barboza had told him that they were participants in the murder of Teddy Deegan.²⁰⁸

²⁰³ WILLIE FOPIANO, *THE GODSON: A TRUE-LIFE ACCOUNT OF 20 YEARS INSIDE THE MOB* 127 (St. Martin’s Press 1993).

²⁰⁴ Memorandum from Bruce A. Holloway, Sergeant Detective, Office of Special Investigations, to James T. Curran, Lieutenant Detective, Office of Special Investigations (July 30, 1993) (Exhibit 855).

²⁰⁵ “The FBI’s Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati,” *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 97 (May 3, 2001) (testimony of Victor Garo); *see also* Interview with Dan Rea (May 1, 2001).

²⁰⁶ Affidavit of James Southwood (July 11, 1995) (Exhibit 871).

²⁰⁷ Letter from Donald K. Stern, United States Attorney, by James D. Herbert, Assistant U.S. Attorney, Chief, Organized Crime Strike Force Unit, to the Honorable Ralph C. Martin, II, District Attorney, Suffolk County (Apr. 3, 1996) (Exhibit 875).

²⁰⁸ Memorandum from Daniel M. Doherty, Special Agent, to Fred Wyshak, Assistant United States Attorney (Feb. 10, 2000) (Exhibit 916).

- Francis Imbruglia executed an affidavit on July 27, 2000, indicating that he was aware that Peter Limone, Henry Tameleo and Louis Greco had nothing to do with the Deegan murder.²⁰⁹
- On August 30, 2000, Wilfred “Roy” French indicated that his previous affidavit was accurate with the exception that he neglected to state that Joseph Salvati had nothing to do with the Deegan murder. He had made no mention of Salvati in the previous affidavit.²¹⁰
- Joseph Balliro, the most experienced attorney among the Deegan defense lawyers, executed an affidavit on November 14, 2000, stating that Jimmy Flemmi had provided him with information that was exculpatory for the Deegan defendants, and that he would divulge this information if ordered to do so by a court.²¹¹
- On January 2, 2001, Ronald Chisholm, who was Ronnie Cassesso’s lawyer at the Deegan trial, said in a newspaper interview that Cassesso admitted to being a participant in the Deegan murder. Cassesso had told him that four of the six convicted were innocent. Cassesso also told him that before the Deegan trial began, FBI Special Agent H. Paul Rico approached him and said that he could escape prison if he corroborated Barboza’s testimony. He refused and spent the remainder of his life in prison.²¹²
- Joseph Balliro executed an affidavit on January 2, 2001, indicating that Jimmy Flemmi told him that Barboza planned the Deegan murder and he participated in the crime.²¹³

The above chronology, in a vacuum, cannot be considered dispositive. If federal and state law enforcement had not been in possession of information indicating that there had been a miscarriage of justice, and that Barboza had committed perjury, then it would have been easy to dismiss the above statements and affidavits as the type of routine information that attaches to any high profile criminal conviction. However, the above evidence is worth mentioning because it was consistent with what FBI officials already knew. It appears that the efforts to ignore information about the Deegan murder were almost directly related to the strength of the evidence indicating that some of those on trial were not involved in the crime as charged.

Barboza also made a number of potentially significant comments in his private correspondence. In closing arguments, Limone’s attorney, Robert Stranziani, quoted from a letter Barboza wrote to his then-girlfriend, “I don’t care whether they’re innocent or not.

²⁰⁹ Affidavit of Francis Imbruglia (July 27, 2000) (Exhibit 921). According to the Chelsea Police Report describing the Deegan murder, just before Deegan was killed Joseph Barboza left the Ebb Tide with “Ronald Cassesso, Vincent [“Jimmy”] Flemmi, Francis Imbruglia, Romeo Martin, Nicky Femia and a man by the name of Freddi[.]” Statement by Thomas F. Evans, Lieutenant, Chelsea Police Department (Mar. 14, 1965) (Exhibit 80).

²¹⁰ Letter from Wilfred Roy French to John Cavicchi (Aug. 30, 2000) (Exhibit 922).

²¹¹ Affidavit of Joseph J. Balliro, *Commonwealth v. Limone* (Nov. 14, 2000) (Exhibit 926).

²¹² Edmund H. Mahony, *Murdered Said Four More Innocent in ‘65 Slaying, Lawyer Says*, HARTFORD COURANT, Jan. 3, 2001, at A8. (Exhibit 929).

²¹³ Affidavit of Joseph J. Balliro, *Commonwealth v. Limone* (Jan. 2, 2001) (Exhibit 930).

They go.”²¹⁴ In another letter to a different friend, Barboza made a request that Dennis Condon and Edward Harrington be contacted so that he could talk to them. He further instructed this friend to place the calls from a particular individual’s office, and he added: “after all he wouldn’t want to obstruct justice in a capital case! ☺”²¹⁵ In another letter to a Santa Rosa investigator he implied that he had the ability to upset the convictions caused by his testimony “& a small Watergate will develop, & Walpole prison doors will open.”²¹⁶

7. *The Deegan Murder Defendants After Conviction*

Federal law enforcement officials worked against the Deegan defendants receiving a fair trial by withholding significant exculpatory evidence. It appears, moreover, that once the Deegan defendants were incarcerated, federal law enforcement officials took affirmative steps to prevent them from receiving any form of executive clemency. The record is not complete on this point. Nevertheless, it appears that some of these steps were not grounded in fact.

The Committee did not investigate efforts by Louis Greco and Henry Tameleo to obtain clemency. Therefore, commentary regarding their efforts to obtain executive clemency is omitted. The following sections discuss efforts by Joseph Salvati and Peter Limone to obtain executive clemency.

i. Joseph Salvati

After Joseph Salvati was convicted and sentenced to life in prison, he filed numerous commutation petitions in an effort to reduce his life sentence. Nearly thirty years after being sentenced, the Governor of Massachusetts finally commuted Salvati’s sentence. Salvati’s attorney, Victor Garo, described the commutation process in a May 3, 2001, Committee hearing:

In Massachusetts when you are convicted of murder in the first degree, you have no right to parole. The only way that you have the right to parole is if you receive a commutation, and a commutation is considered to be an extraordinary legal remedy. In order to get a commutation, three votes have to be taken, one by the parole board sitting as the advisory board of pardons, the second vote by the Governor of the Commonwealth of Massachusetts, and the third vote by the Governor’s Council . . . a duly elected

²¹⁴ See Ronald Wysocki, *Baron Dashed at Deegan Trial*, BOSTON GLOBE, July 29, 1968 (Exhibit 245).

²¹⁵ Letter from John Costa [Joseph Barboza] to [Name Redacted by Committee] (Jan. 14, 1974) (“Smiley face” appears in the original letter) (Exhibit 593).

²¹⁶ Letter from Joseph Bentley [Joseph Barboza] to Greg Evans (Mar. 22, 1974) (Exhibit 605). It is illustrative of the failures of the past forty years in New England that, while the federal government is opposing civil lawsuits in Boston alleging government misconduct, the Justice Department appears disinterested in obtaining evidence about Barboza and his perjurious testimony. For example, the Committee was able to obtain a large body of correspondence between Barboza and a number of individuals simply by asking the individuals. The Justice Department has not only refrained from making such a request, it has also failed to approach the individuals to ask them any questions about their substantive knowledge of Barboza, his testimony in the various cases during which he was a cooperating witness, and his subsequent criminal conduct.

body. The three of those votes have to be situated for you to get a commutation. It is not easy to obtain.²¹⁷

Commutation applicants must initially file a petition for a commutation hearing with the Massachusetts Parole Board. If approved, petitioners earn the opportunity to present their case to the Advisory Board of Pardons. The Advisory Board of Pardons forwards approved petitions to the Governor. If the Governor concurs with the Advisory Board's recommendation that a prisoner's sentence be commuted, the petition is considered by the Governor's Council, a group of eight elected officials. With the Council's consent, a prisoner is granted clemency.

Joseph Salvati's greatest obstacle proved to be the first one: receiving a hearing before the Advisory Board of Pardons. On November 28, 1975, Salvati filed his first petition for a commutation hearing with the Parole Board.²¹⁸ The Parole Board voted unanimously to deny Salvati's petition for a hearing, pointing out that insufficient time had elapsed since his sentencing.²¹⁹

For his second petition, Salvati enlisted the support of two officials who assisted in his prosecution: Frank Walsh and Jack Zalkind. Frank Walsh, Sergeant for the Boston Police Department, was an investigating officer in the Deegan murder.²²⁰ Walsh arrested Salvati on October 25, 1967, for the Deegan murder and assisted in Salvati's prosecution and conviction.²²¹ In a letter to the Parole Board, the former detective wrote, "This is the first time I have ever written to a Parole Board on behalf of any person. My sincere conviction that Mr. Salvati should be granted the opportunity to be heard by the Parole Board prompts me to express my views."²²²

Jack Zalkind, the prosecutor in the Deegan trial, expressed an even stronger opinion. Mr. Zalkind's letter to the Parole Board stated, "Mr. Salvati's involvement was minimal."²²³ He continued, "I would have no hesitation to recommend that Mr. Salvati's Petition for Commutation be granted by the Parole Board. Furthermore, if the Board would like me to appear personally on behalf of Mr. Salvati, I would be willing to do so."²²⁴ Thus, two officials who had significant responsibility for putting Salvati in prison agreed that, at the very least, he deserved a hearing.

In addition to these two letters, Parole Board member Wendie Gershengorn requested that Parole Board Investigator Joseph Williams prepare a confidential memorandum regarding Joseph

²¹⁷ "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 70 (May 3, 2001) (testimony of Victor Garo).

²¹⁸ Massachusetts Executive Office of Public Safety Document Production (Letter from Martin K. Leppo, Partner, Leppo and Paris, to Executive Secretary, State of Massachusetts (Nov. 28, 1975)) (Exhibit 630).

²¹⁹ Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Received Dec. 10, 1975)) (Exhibit 635).

²²⁰ Massachusetts Executive Office of Public Safety Document Production (Letter from Frank L. Walsh, former Sergeant Detective, Boston Police Department, to Paul Carr, Administrative Assistant, Massachusetts Parole Board (Jan. 26, 1976)) (Exhibit 634).

²²¹ *Id.*

²²² *Id.*

²²³ Massachusetts Executive Office of Public Safety Document Production (Letter from Jack I. Zalkind, former Assistant District Attorney, Suffolk County, to Paul Carr, Administrative Assistant, Massachusetts Parole Board (Feb. 20, 1976)) (Exhibit 637).

²²⁴ *Id.*

Salvati.²²⁵ The memorandum stated: “The ‘word’ from reputable law enforcement officers was that subject [Joe Salvati] was just thrown in by Barboza on the murder because he hated subject, that Joseph Barboza was asked by people was this true and that Barboza denied this.”²²⁶ Notwithstanding this observation by Williams, Gershengorn did not ask for any additional information. During testimony before the Committee, Gershengorn could not recall why she asked Williams to prepare a report or whether she asked for more information after she reviewed the report.²²⁷ In an interview with Committee investigators, Williams said the following about Salvati: “To my knowledge, he was never involved in the [Deegan] murder.”²²⁸ Despite this information, the Parole Board denied Salvati’s second petition for a commutation hearing on February 28, 1977. The Board found that Salvati had served an insufficient amount of time to warrant a hearing.²²⁹

Nearly two years later, on February 1, 1979, Salvati filed his third petition for a commutation hearing.²³⁰ Jack Zalkind and Frank Walsh again wrote letters supporting a commutation.²³¹ The Superintendent of Framingham Correctional Institute, where Salvati had been imprisoned for over five years, added his voice to the growing chorus advocating a shortened sentence for Salvati.²³² Moreover, correction officers, social workers, businessmen, and family members wrote letters of support for Salvati. Unpersuaded, the Parole Board voted on February 16, 1979, not to grant him a hearing because “this petition has been presented too soon following conviction of Murder-First Degree.”²³³

Salvati submitted his fourth petition for a commutation hearing on July 2, 1980.²³⁴ Several months later, on November 18, 1980,

²²⁵ Massachusetts Executive Office of Public Safety Document Production (Memorandum from Joseph M. Williams, Jr., Supervisor, Warrant & Investigation Unit, to Massachusetts Parole Board (Nov. 29, 1976)) (Exhibit 654); see also “Investigations of Allegations of Law Enforcement Misconduct in New England,” *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 105 (May 11, 2002) (testimony of Wendie Gershengorn). In an interview with Williams, the Parole Board Investigator initially claimed that there were no documents indicating his involvement in Salvati’s commutation attempts. Williams said he very rarely produced written reports on petitioners and was never asked to compile a report on Salvati. Contrary to Williams’ claims, the Committee obtained a memorandum regarding Salvati that was drafted by Williams. In addition, the Committee has a second report written by Williams regarding Peter Limone, another Deegan defendant. Interview with Joseph Williams, former Supervisor of the Warrant & Investigation Unit, Massachusetts Parole Board (June 29, 2001).

²²⁶ Massachusetts Executive Office of Public Safety Document Production (Memorandum from Joseph M. Williams, Jr., Supervisor, Warrant & Investigation Unit, to Massachusetts Parole Board (Nov. 29, 1976)) (Exhibit 654).

²²⁷ “Investigations of Allegations of Law Enforcement Misconduct in New England,” *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 105–07 (May 11, 2002) (testimony of Wendie Gershengorn).

²²⁸ Interview with Joseph Williams, Supervisor of the Warrant & Investigation Unit, Massachusetts Parole Board (June 29, 2001).

²²⁹ Massachusetts Executive Office of Public Safety Document Production (Letter from Massachusetts Advisory Board of Pardons, to the Governor, State of Massachusetts (Feb. 28, 1977)) (Exhibit 657).

²³⁰ Massachusetts Executive Office of Public Safety Document Production (Petition for Commutation of Sentence of Joseph L. Salvati (Feb. 1, 1979)) (Exhibit 679).

²³¹ Massachusetts Executive Office of Public Safety Document Production (Letter from Jack Zalkind, former Assistant District Attorney, Suffolk County (Mar. 12, 1979)) (Exhibit 683); Massachusetts Executive Office of Public Safety Document Production (Letter from Frank L. Walsh, former Sergeant Detective, Boston Police Department (Mar. 15, 1979)) (Exhibit 684).

²³² Massachusetts Executive Office of Public Safety Document Production (Letter from John E. Bates, Superintendent, Framingham Correctional Institution (Nov. 13, 1978)) (Exhibit 675).

²³³ Massachusetts Executive Office of Public Safety Document Production (Letter from the Massachusetts Advisory Board of Pardons, to the Governor, State of Massachusetts (Feb. 23, 1979)) (Exhibit 681).

²³⁴ Massachusetts Executive Office of Public Safety Document Production (Petition for Commutation of Joseph L. Salvati (July 2, 1980)) (Exhibit 699).

FBI Agents John J. Cloherty, Jr., and Robert R. Turgiss met with the Deputy Commissioner of Corrections, the Director of Internal Affairs at the Department of Corrections, and the Superintendent at Framingham Correctional Institute, where Salvati was imprisoned.²³⁵ One of the purposes of this meeting was to discuss allegations that Salvati was using the prison's canteen to bring drugs into the institution.²³⁶ The FBI also alleged that Salvati was operating a gambling ring using the prison's telephones and computer equipment.²³⁷ On the same day the FBI brought these allegations to the attention of Corrections authorities, the Advisory Board of Pardons voted to deny Salvati a commutation hearing.²³⁸ Salvati was later cleared of any misconduct arising from these allegations.²³⁹

Salvati petitioned the Board again on November 12, 1985.²⁴⁰ By this time, the Board's reservations about granting Salvati a hearing had apparently abated. In a unanimous vote, the Board approved Salvati's petition in early January 1986.²⁴¹ The Board reasoned that Salvati deserved a hearing based on his "excellent institutional record," and the fact that three co-defendants in the Deegan trial had already received a hearing.²⁴²

Following this vote, the Board requested information on Salvati from the Federal Bureau of Investigation,²⁴³ the Massachusetts Department of Correction,²⁴⁴ the Massachusetts Department of Public Safety,²⁴⁵ and the Suffolk County District Attorney.²⁴⁶ The FBI responded to the Board's request in a letter signed by Supervisor Special Agent James A. Ring. The letter connected Salvati to Frank Oreto, who was under investigation at the time for running a loansharking business. The letter notified the Board of the following:

Concerning Joseph Salvati, investigation by the FBI and Massachusetts State Police placed Salvati in contact with Frank Oreto during November and December of 1985, and

²³⁵ Department of Justice Document Production (Memorandum from John J. Cloherty, Jr., Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (Nov. 20, 1980)) (Exhibit 701).

²³⁶ *Id.*

²³⁷ *Id.* Salvati was later indicted for these offenses. See *Prison Probe Indictments*, BOSTON GLOBE, Mar. 28, 1982, at 40 (Exhibit 734).

²³⁸ See Massachusetts Executive Office of Public Safety Document Production (Letter from Massachusetts Advisory Board of Pardons to the Governor, State of Massachusetts (undated)) (Exhibit 702).

²³⁹ Massachusetts Executive Office of Public Safety Document Production (Memorandum from Tammy E. Perry, Assistant, to the Director, Massachusetts Advisory Board of Pardons (Nov. 28, 1988)) (Exhibit 749).

²⁴⁰ Massachusetts Executive Office of Public Safety Document Production (Letter from Victor J. Garo, Attorney for Joseph Salvati, to Louise Maloof, Executive Secretary, Governor's Council (Nov. 12, 1985)) (Exhibit 792).

²⁴¹ Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Dec. 26, 1985, and Jan. 6, 1986)) (Exhibit 794).

²⁴² *Id.*

²⁴³ Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to James Greenleaf, Special Agent in Charge, Boston FBI Field Office (Feb. 4, 1986)) (Exhibit 795).

²⁴⁴ Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to Michael V. Fair, Commissioner, Massachusetts Department of Correction (Feb. 4, 1986)) (Exhibit 795).

²⁴⁵ Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to Frank Trabucco, Commissioner, Massachusetts Department of Public Safety (Feb. 4, 1986)) (Exhibit 795).

²⁴⁶ Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to Newman Flanagan, District Attorney, Suffolk County (Feb. 4, 1986)) (Exhibit 795).

particular details regarding a meeting between these two individuals in the vicinity of the Museum of Fine Arts in Boston has already been provided to you by the Massachusetts State Police and is therefore not being reiterated.²⁴⁷

The implication of this communication is that there might be something to the Salvati-Oreto contact for the Board to consider. In an effort to determine whether there was an innocent explanation for this contact, the Committee requested that the Department of Justice provide all records of intercepted conversations between Salvati and Oreto.²⁴⁸ If the Oreto surveillance tapes indicated that the contacts were innocuous, one would have expected the FBI to make this clear in its letter to the Parole Board.²⁴⁹ Similarly, if the tapes raised a matter of concern, one would have expected the FBI to provide that specific information to the Parole Board. The Justice Department, however, was unable to locate the tapes of the conversations or any transcripts of the tapes.²⁵⁰

The impact of the letter from the FBI, however, was significant in that the Parole Board reversed its decision to grant Salvati a commutation hearing. All seven of the Board members cited the information provided by the FBI as the reason for denying Salvati a chance to be heard.²⁵¹

On August 8, 1988, over twenty months after the FBI notified the Parole Board of the Salvati-Oreto contacts, the Board requested an update on the FBI's investigation.²⁵² An FBI response to the Board's request for information was not included in the documents provided to the Committee by the Massachusetts Parole Board, which suggests that the FBI never responded to the Board's request.

Salvati again applied for a commutation hearing on October 17, 1988.²⁵³ The Board approved Salvati's petition for a hearing this time with Board member Michael Albano commenting that the concern raised by the FBI in 1986 was "apparently resolved."²⁵⁴ Uncertain about the status of the investigation, the Board for a second time had requested an update on the FBI's probe into the relation-

²⁴⁷ Massachusetts Executive Office of Public Safety Document Production (Letter from James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Mar. 24, 1986)) (Exhibit 797). The names of both SAC James Greenleaf and Supervisory Special Agent James Ring appear on the letter, but only James Ring's signature is on the letter. Although Salvati was in prison, he did receive occasional furloughs.

²⁴⁸ Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to John Ashcroft, Attorney General, U.S. Dept. of Justice (Dec. 18, 2001) (Appendix I). At this time, the FBI and Massachusetts State Police were conducting a joint investigation of Oreto. Oreto was under surveillance, and his telephone lines were wiretapped.

²⁴⁹ Massachusetts Executive Office of Public Safety Document Production (Letter from James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Mar. 24, 1986)) (Exhibit 797). Salvati's attorney, Victor Garo, maintains that his client and Oreto harmlessly met to discuss selling an antique car that sparked Oreto's interest. Interview of Victor Garo, Attorney for Joseph Salvati (Mar. 26, 2001).

²⁵⁰ Communicated by telephone to James C. Wilson, Chief Counsel, Comm. on Govt. Reform.

²⁵¹ Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Dec. 4, 1986)) (Exhibit 800).

²⁵² Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to James Ahearn, Special Agent in Charge, Boston FBI Field Office (Aug. 8, 1988)) (Exhibit 822).

²⁵³ Massachusetts Executive Office of Public Safety Document Production (Letter from Victor J. Garo to Louise Maloof, Executive Secretary, Governor's Council (Oct. 17, 1988)) (Exhibit 823).

²⁵⁴ Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Mar. 14, 1989)) (Exhibit 824).

ship between Salvati and Oreto.²⁵⁵ The FBI responded in a letter stating that it had dropped the investigation of the contacts between Oreto and Salvati sometime after the Board's vote in 1986.²⁵⁶ Based on the evidence it had gathered, the FBI arrived at two conclusions: Salvati had no relationship with Oreto's loanshark operation, and Salvati likely met with Oreto so his wife could borrow money from Oreto.²⁵⁷ The Board was not informed that the Salvati-Oreto investigation was closed until it received this letter. With the FBI having reached an innocuous conclusion about the relationship between Salvati and Oreto, the Board unanimously granted Salvati clemency on December 8, 1989.²⁵⁸ Although this was a positive step, it was only the first step in the process to obtain a release from prison.

The FBI first raised the possibility that Salvati was involved in Frank Oreto's loansharking business on March 24, 1986.²⁵⁹ Over three and a half years later, the FBI finally resolved this concern on December 1, 1989.²⁶⁰ During this time, action on Salvati's commutation requests ground to a halt. Most disturbing, however, is that the FBI could have determined that Salvati was not involved in Oreto's loansharking business *before* writing the March 24, 1986, letter. According to Agent James Ring, the FBI official who signed the March 24, 1986, letter, the FBI found the Oreto's book of records on January 9, 1986 that indicated that Salvati was a debtor to, not an owner of, the loansharking business.²⁶¹ Although the FBI and Massachusetts State Police had the records two and a half months *before* the FBI's warning letter to the Parole Board, their conclusions about Salvati's relationship to Oreto were not included in the letter.

After approving Salvati's clemency petition, the Board waited seventeen months before forwarding its recommendation to the Governor.²⁶² Incoming Governor William Weld had already voiced opposition to clemency for the Deegan defendants.²⁶³

The Board finally submitted its opinion to Governor Weld on April 29, 1991.²⁶⁴ For over a year and a half, Governor Weld took no action on Salvati's petition. The Governor ultimately responded

²⁵⁵Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to James Ahearn, Special Agent in Charge, Boston FBI Field Office (Nov. 30, 1989)) (Exhibit 836).

²⁵⁶Massachusetts Executive Office of Public Safety Document Production (Letter from James F. Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Dec. 1, 1989)) (Exhibit 837).

²⁵⁷*Id.*

²⁵⁸Massachusetts Executive Office of Public Safety Document Production (Executive Clemency Vote Sheet (Dec. 8, 1989)) (Exhibit 838).

²⁵⁹Massachusetts Executive Office of Public Safety Document Production (Letter from James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Mar. 24, 1986)) (Exhibit 797).

²⁶⁰Massachusetts Executive Office of Public Safety Document Production (Letter from James F. Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Dec. 1, 1989)) (Exhibit 837).

²⁶¹Interview with James A. Ring, Supervisory Special Agent, Boston FBI Field Office (Sept. 25, 2002).

²⁶²Massachusetts Executive Office of Public Safety Document Production (Opinion of the Advisory Board of Pardons (Apr. 29, 1991)) (Exhibit 845).

²⁶³*Id.*; see also Letter from William F. Weld, U.S. Attorney, Dept. of Justice, to Michael S. Dukakis, Governor, State of Massachusetts (Sept. 12, 1983) (strongly recommending that the Governor deny clemency for Peter Limone, a Deegan defendant) (Exhibit 775); Letter from William F. Weld, U.S. Attorney, Dept. of Justice, to Brian A. Callery, Chairman, Massachusetts Parole Board (July 1, 1983) (urging the Board to deny a commutation to Limone) (Exhibit 770).

²⁶⁴Massachusetts Executive Office of Public Safety Document Production (Opinion of the Advisory Board of Pardons (Apr. 29, 1991)) (Exhibit 845).

on January 19, 1993, with a tersely worded rejection. The Governor based his denial “in part upon the seriousness of the crimes and the length of your criminal record.”²⁶⁵ However, “the length of [Salvati’s] criminal record” only included a 1956 conviction for stealing a pair of pliers and a couple of traffic tickets.²⁶⁶

Soon after Weld’s 1993 denial, Boston television journalist Dan Rea began to cover the Salvati case.²⁶⁷ Rea spotlighted evidence and witnesses that pointed to Salvati’s innocence in a series of over thirty television reports.²⁶⁸ On February 5, 1997, Governor Weld commuted Salvati’s sentence.²⁶⁹ Despite the fact that Weld had recommended only six other commutations during his administration, the Governor insisted that his decision was unrelated to Salvati’s newfound notoriety.²⁷⁰

ii. Peter Limone

A second Deegan defendant, Peter Limone, also encountered FBI opposition to his efforts to seek clemency. On his first three attempts, the Parole Board denied Limone a commutation hearing.²⁷¹ On January 3, 1983, his luck changed when the Board granted Limone an opportunity to present his case for clemency.²⁷² Within the month, the FBI wrote a letter to the Board stating, “Current law enforcement intelligence reflects that Peter Limone continues to be considered an important cog in the Boston Organized Criminal element. Should Mr. Limone be released, he would enjoy a position of elevated status within the Boston Organized Crime Structure.”²⁷³ Parole Board Investigator Joseph Williams concurred with the FBI’s opinion that Limone was a member of the Boston mafia.²⁷⁴

Several Board members told Committee investigators about personal contacts by FBI agents lobbying against Limone’s release. Richard Luccio said he received an unsolicited telephone call from FBI agents, requesting that Limone’s hearing be denied.²⁷⁵ Luccio told Committee investigators that the agents were attempting to

²⁶⁵ Massachusetts Executive Office of Public Safety Document Production (Letter from William F. Weld, Governor, Commonwealth of Massachusetts, to Joseph Salvati (Jan. 19, 1993)). (Exhibit 854).

²⁶⁶ “The FBI’s Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati,” *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 72 (May 3, 2001) (testimony of Victor Garo). The 1956 conviction involved the theft of some pliers. See Massachusetts Executive Office of Public Safety Document Production (Opinion of the Advisory Board of Pardons (Apr. 29, 1991)) (Exhibit 845).

²⁶⁷ Don Aucoin, *Weld Seeks Clemency for Salvati*, BOSTON GLOBE, Dec. 19, 1996, at B1.

²⁶⁸ Don Aucoin, *Dead Convict’s Lawyer Hits Weld on Sentence Commutation*, BOSTON GLOBE, Jan. 4, 1997, at B6.

²⁶⁹ Massachusetts Executive Office of Public Safety Document Production (Commutation of Joseph Salvati (Feb. 5, 1997)).

²⁷⁰ Don Aucoin, *Dead Convict’s Lawyer Hits Weld on Sentence Commutation*, BOSTON GLOBE, Jan. 4, 1997, at B6.

²⁷¹ Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheets (Nov. 8, 1978, June 2, 1981, and Mar. 23, 1982)) (Exhibit 674).

²⁷² Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Received Nov. 4, 1982)) (Exhibit 750).

²⁷³ Letter from John M. Morris, Supervisory Special Agent, Boston FBI Field Office, and James A. Ring, Acting Supervisory Special Agent, Boston FBI Field Office, to Brian A. Callery, Chairman, Massachusetts Parole Board (Jan. 27, 1983) (Exhibit 751). This letter was a response to the Parole Board’s request for information on Peter Limone. Though Agent Ring signed the letter, he stated that he had no memory of the letter. Ring also stated that he suspected Agent Morris wrote the letter because Ring had just arrived at the Boston FBI Office in January 1983.

²⁷⁴ Memorandum from Joseph Williams, Warrant & Investigation Unit, Massachusetts Parole Board, to the Advisory Board of Pardons (Apr. 22, 1983) (Exhibit 756).

²⁷⁵ Interview with Richard Luccio, Member, Massachusetts Parole Board (May 31, 2001).

influence his decision but were unsuccessful.²⁷⁶ Michael Albano, who was also a Board Member, told the Committee that two FBI agents personally visited him regarding the Limone commutation and asked him “intimidating” questions.²⁷⁷ Albano said that one of the agents told him, “If you let this bastard [Limone] out, you’ll have to let them all out,” referring to the other Deegan defendants. In addition, Mr. Albano and another Board Member, Kevin Burke, both recall that FBI agents attended the Limone hearing.²⁷⁸ In spite of the FBI’s lobbying effort, the Board approved Limone’s petition for a commutation on August 1, 1983, by a 5–2 vote.²⁷⁹ Massachusetts Governor Michael Dukakis, however, did not support the Board’s recommendation and denied Limone clemency the following month.²⁸⁰

The full ramifications of the Limone vote were not felt until the following year. The former chairman of the Massachusetts Parole Board told Committee investigators that in 1984, the two Board members who opposed Limone’s commutation requested an investigation of the five Board members who favored Limone’s commutation to determine whether they were influenced by organized crime figures.²⁸¹ Another former Board member told Committee investigators that State Police Colonel Peter Agnes conducted the investigation in a “very accusatory manner.”²⁸² Another Board member recalled for Committee investigators that Colonel Agnes told him that the FBI was either a partner in the investigation or interested in the results of the investigation.²⁸³ After the accused Board members were cleared of any criminal wrongdoing, the allegations were then referred to the state Ethics Commission, which found no violations.²⁸⁴ Former Board members told Committee investigators that the multiple investigations fractured the Board and caused its members to be wary of organized crime cases.²⁸⁵

²⁷⁶ *Id.*

²⁷⁷ Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002). Mr. Albano believes the two agents were Special Agent John Connolly and Supervisory Special Agent John Morris. *Id.* The Special Agent in Charge (SAC) of the Boston FBI Office at this time, James W. Greenleaf, said it would be unusual for an agent to request a meeting with a Board member regarding a petitioner, but SAC Greenleaf was unsure whether such actions violated Bureau policy. Interview with James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office (Sept. 25, 2002).

²⁷⁸ Interview with Kevin Burke, Member, Massachusetts Parole Board (May 30, 2001). James Ahearn, who served as Special Agent in Charge of the Boston Office from 1986 to 1989, commented that it would be “most unusual and improper” for an FBI agent to attend a commutation hearing unless authorized.

²⁷⁹ Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Aug. 1, 1983)) (Exhibit 773).

²⁸⁰ Shelley Murphy, *Parole Panelists Cite Retaliation After Vote*, BOSTON GLOBE, June 19, 2001.

²⁸¹ Interview with Brian Callery, former Chairman, Massachusetts Parole Board (June 26, 2001).

²⁸² Interview with Kevin Burke, former Board Member, Massachusetts Parole Board (May 30, 2001). Another Board member recalls that income tax records were searched for irregularities. Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002).

²⁸³ Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002).

²⁸⁴ See Interview with Jack Curran, former Chairman, Massachusetts Parole Board (June 28, 2001); Shelley Murphy, *Parole Panelists Cite Retaliation After Vote*, BOSTON GLOBE, June 19, 2001, at B2.

²⁸⁵ See Interview with Dick Luccio, former Board Member, Massachusetts Parole Board (May 31, 2001); Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002).

Peter Limone received a second commutation hearing in 1987.²⁸⁶ Upon request of the Parole Board, the FBI submitted two separate letters detailing contacts between Limone and organized crime members.²⁸⁷ The Board denied Limone's clemency request based, in part, on the FBI's letters.²⁸⁸ In 1990, Limone again petitioned for clemency, but was not even granted a hearing.²⁸⁹ Judge Hinkle ordered Limone's release on January 5, 2001, because new evidence cast serious doubts on the credibility of Joseph Barboza, whose testimony helped convict Limone.²⁹⁰ Limone did not receive a commutation.

8. *Efforts to Protect Stephen Flemmi After the Deegan Murder Trial*

After the Deegan murder trial, Stephen Flemmi led a charmed life. The FBI protected Flemmi from being prosecuted for his role in major criminal activities—including murder and attempted murder, drug dealing, and arms running—for the next two decades. The Committee has not thoroughly investigated these matters; nevertheless, a brief recapitulation of efforts to protect Stephen Flemmi provides an indication of how far the government went to assist their Top Echelon informant. Although the Justice Department has not yet provided the Committee with all documents pertaining to Stephen Flemmi, the following efforts to protect Flemmi have come to the Committee's attention:

- On December 23, 1967, Stephen Flemmi allegedly murdered William Bennett.²⁹¹ On January 30, 1968, Flemmi allegedly planted a car bomb in attorney John Fitzgerald's car.²⁹² Flemmi was indicted for the Bennett murder on September 11, 1969.²⁹³ He was indicted for his role in the Fitzgerald bombing on October 10, 1969.²⁹⁴ Prior to being indicted for these crimes, FBI Special Agent H. Paul Rico called Flemmi to warn him that he was about to be indicted and that he should flee.²⁹⁵ Flemmi followed Agent Rico's advice and left the country.²⁹⁶ Flemmi did not return to Boston until 1974, when Agent Rico advised Flemmi to return because his legal problems would be favorably

²⁸⁶ Massachusetts Executive Office of Public Safety Document Production (Clemency Vote Sheet (Nov. 16, 1987)) (Exhibit 812).

²⁸⁷ Letter from James Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Oct. 19, 1987) (Exhibit 810); Letter from James Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Oct. 28, 1987) (Exhibit 811).

²⁸⁸ Letter from James Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Oct. 19, 1987) (Exhibit 810); Letter from James Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Oct. 28, 1987) (Exhibit 811).

²⁸⁹ Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (June 25, 1990)) (Exhibit 842).

²⁹⁰ *Commonwealth v. Limone*, No. 32367, 32369, 32370, slip op. at *14 (Suffolk County Sup. Ct. Jan. 5, 2001).

²⁹¹ Interview with Robert Daddico (Oct. 17–18, 2001); see also Shelley Murphy, *Playing Both Sides Pays Off*, BOSTON HERALD, Apr. 23, 1993.

²⁹² "Law enforcement officials said Mr. Fitzgerald was targeted for death because he was the lawyer for a famed Cosa Nostra soldier turned-informer, Joseph Barboza Baron." Andy Dabilis & Ralph Ranalli, *Mob Lawyer Maimed in '68 Dies*, BOSTON GLOBE, July 5, 2001.

²⁹³ See Office of Professional Responsibility Investigative Report (focusing on allegations of FBI mishandling of confidential informants) (Exhibit 280).

²⁹⁴ *Commonwealth v. Salemme*, 323 N.E. 2d 922 (Mass. App. 1975).

²⁹⁵ *U.S. v. Salemme*, 91 F. Supp. 2d 141, 148, 182 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).

²⁹⁶ *Id.*

resolved.²⁹⁷ Rico was correct. Robert Daddeico told Committee investigators that he was not pressed to testify against Flemmi for the Bennett murder and the Fitzgerald car bombing.²⁹⁸ On May 6, 1974, as arranged by Rico, Flemmi returned to Boston and was promptly released on bail.²⁹⁹ Soon thereafter, Flemmi's fugitive charges, the Bennett murder charges, and the car bombing charge were dismissed.³⁰⁰

- A former Las Vegas police detective told Committee investigators that in 1970, the FBI interfered with a Nevada law enforcement investigation to protect Flemmi from being prosecuted for the murder of Peter Poulos.³⁰¹
- In 1977, FBI Special Agent John Connolly alerted Flemmi that a cleaning company had been "wired" to obtain evidence of Flemmi's loansharking.³⁰² "As a result, Flemmi avoided that location and was not intercepted."³⁰³
- In 1977 or 1978, National Melotone, a vending machine company, attempted to prompt an FBI probe of Stephen Flemmi for using threats of violence against National Melotone officials to have their machines replaced with machines from Flemmi's National Vending Company.³⁰⁴ Connolly sought to protect Flemmi and successfully dissuaded National Melotone officials from pursuing their allegations.³⁰⁵
- In October 1977, informant information indicated that Stephen Flemmi made death threats to an individual named Francis Green.³⁰⁶ Green corroborated this information.³⁰⁷ However, although Green was used as an important government witness in another matter, the FBI never sought to develop Green as a witness against Flemmi.³⁰⁸
- In 1979, Boston Organized Crime Strike Force prosecutor Jeremiah O'Sullivan was conducting an investigation into allega-

²⁹⁷ *Id.* at 185.

²⁹⁸ Interview with Robert Daddeico (Oct. 17–18, 2001); Former FBI Special Agent Dennis Condon testified: "It's also my understanding that Daddeico positively refused to testify against Flemmi, supposedly because he had a dislike for Salemme that he did not have for Flemmi, and refused to testify. That's my understanding. Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 187 (February 21, 2002). It is worth noting that law enforcement did not pressure Daddeico to testify against Flemmi, and it appears that it was acceptable to law enforcement to allow the witness to testify against one defendant and refrain from testifying against another defendant based on personal friendship.

²⁹⁹ *Salemme*, 91 F. Supp. 2d at 185.

³⁰⁰ *Id.* at 182, 185. The *Salemme* court found:

If Flemmi had been prosecuted in 1969 for the Fitzgerald bombing or the William Bennett murder, his role as an FBI informant might have been disclosed, and its legal implications might have been examined, three decades ago. Flemmi's successful flight to avoid prosecution spared Rico, and the FBI the risk of the embarrassment and controversy that disclosure of Flemmi's dual status as an FBI informant and an alleged murderer has recently entailed. Rico had reason to be concerned about embarrassment to the FBI. . . . By honoring his promise to protect Flemmi, Rico also promoted the possibility that Flemmi would in the future again become a valuable FBI informant.

³⁰¹ Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

³⁰² *Salemme*, 91 F. Supp. 2d at 198.

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

tions of a horse race-fixing scheme.³⁰⁹ The key witness, Anthony Ciulla, provided evidence that Stephen Flemmi participated in the scheme.³¹⁰ Understanding that they could lose Flemmi as an informant, in early January 1979, FBI Supervisory Special Agent John Morris and FBI Special Agent John Connolly met with O'Sullivan in an effort to convince him not to indict and prosecute Flemmi.³¹¹ Notwithstanding evidence that Flemmi was a principal in the criminal conspiracy, Flemmi was not indicted for his role in the race-fixing scheme.³¹² O'Sullivan testified before the Committee on December 5, 2002, that at the time he was considering indictments for the Ciulla race-fixing case, he knew Flemmi was a murderer but used "prosecutorial discretion" in deciding not to prosecute Flemmi.³¹³ O'Sullivan claimed that he did not indict Flemmi because the testimony against him was uncorroborated.³¹⁴ However, a prosecution memorandum shows that O'Sullivan indicted another individual, James Sims, even though the testimony against him was also uncorroborated.³¹⁵ Moreover, O'Sullivan testified before the Committee that another reason that he did not indict Flemmi was because Flemmi's role in the race-fixing scheme was limited to receipt of proceeds from the illegal scheme.³¹⁶ This testimony was false. When confronted with his own memorandum that Stephen Flemmi and James Bulger participated in a meeting to discuss the race-fixing scheme, that Bulger and Flemmi "would help find outside bookmakers to accept the bets of the group" that they were financiers of the conspiracy and that Flemmi appeared to be a part of the core working group of the conspiracy, O'Sullivan replied, "You've got me."³¹⁷

³⁰⁹ *Id.* at 199; Memorandum from Gerald E. McDowell, Attorney in Charge, and Jeremiah T. O'Sullivan, Prosecutor, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Jan. 29, 1979) (document retained by the Justice Department).

³¹⁰ *Salemme*, 91 F. Supp. 2d at 199; Memorandum from Gerald E. McDowell, Attorney in Charge, and Jeremiah T. O'Sullivan, Prosecutor, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Jan. 29, 1979) (document retained by the Justice Department).

³¹¹ *Salemme*, 91 F. Supp. 2d at 200; "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 300-02 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan).

³¹² *Salemme*, 91 F. Supp. 2d at 200; Memorandum from Gerald E. McDowell, Attorney in Charge, and Jeremiah T. O'Sullivan, Prosecutor, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Jan. 29, 1979) (document retained by the Justice Department).

³¹³ "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 335 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan); see also Shelley Murphy, *Former US Attorney Denies Protecting FBI Informants*, BOSTON GLOBE, Dec. 6, 2002, at A1.

³¹⁴ *Id.*; see also Shelley Murphy, *Former US Attorney Denies Protecting FBI Informants*, BOSTON GLOBE, Dec. 6, 2002, at A1.

³¹⁵ See Memorandum from Walter T. Barnes and Edward F. Harrington, Assistant U.S. Attorney, to Henry Petersen, Chief, Organized Crime and Racketeering Section (June 6, 1967) (document retained by the Justice Department) ("James L. Sims—The case against Sims rests solely on Ciulla's testimony."). O'Sullivan also admitted this when testifying before the Committee. "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 301-02 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan).

³¹⁶ "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 325 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan).

³¹⁷ "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 326 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan); Memorandum from Gerald E. McDowell, Attorney in Charge of the Boston Strike Force, and Jeremiah T. O'Sullivan, of the Boston Organized Crime Strike Force, to Gerald T. McGuire, Deputy Chief of the Organized Crime and Racketeering Section (Jan. 29, 1979) (document is retained by the

- Notwithstanding the fact that FBI Supervisory Special Agent John Morris received informant information in July 1979 that Flemmi was “shaking down” bookmakers, the FBI made no effort to investigate this matter.³¹⁸
- In 1979 and early 1980, the FBI received informant information that Flemmi was involved in additional criminal activity, including illegal gambling and drug trafficking.³¹⁹ The FBI did not investigate these allegations.³²⁰
- “In 1980, the FBI contributed to frustrating a Massachusetts State Police investigation of criminal activity of . . . [Stephen] Flemmi and many others occurring at the Lancaster Street Garage[.]”³²¹
- In 1981 and 1982, the FBI received reliable informant information that Stephen Flemmi was involved in illegal drug distribution and demanded money from bookmakers to operate in South Boston.³²² However, the FBI did not investigate these allegations.³²³
- On May 27, 1981, business tycoon and owner of World Jai Alai, Roger Wheeler, was murdered in Tulsa, Oklahoma.³²⁴ Shortly thereafter, Flemmi became a major suspect in the Wheeler murder.³²⁵ Boston FBI officials prevented other FBI offices and local law enforcement agents, including Tulsa, Oklahoma, police officials, from interviewing Flemmi.³²⁶ Brian Halloran, who was facing a state murder charge, began cooperating with the FBI in Boston and implicated Flemmi in the Wheeler murder by stating that he met with Flemmi at former World Jai Alai President John Callahan’s apartment and was asked to kill Wheeler.³²⁷ Concerned that Halloran’s allegations would jeopardize Flemmi’s informant status, FBI Supervisory Special Agent John Morris told FBI Special Agent John Connolly of Halloran’s co-

Justice Department). The memorandum states the following: “The Boston Strike Force recommends the indictment of the twenty-one individuals listed below, including the principals of the Winter Hill gang, for their involvement with Anthony Ciulla in a multi-state pari-mutuel thoroughbred horse race fixing scheme involving race tracks in five states.” The net profits were almost two million dollars. Ciulla and Barnoski met with Howard Winter “and six of his associates” in late 1973 to discuss a race fixing scheme. “Winter and his partners would provide the money necessary to carry out the scheme.” The six associates included Flemmi and James Bulger. The memo states that after the initial meeting with Winter, Ciulla and Barnoski met with Winter’s other partners in the scheme—John Martorano, Joseph McDonald, James Sims, John Martorano, James Bulger and Stephen Flemmi. Bulger and Flemmi “would help find outside bookmakers to accept the bets of the group.” “Ciulla and the Winter group then began to fix races at tracks around the country.” The scheme lasted for 2 years and more than 200 races were fixed. In an interview with the Committee, Anthony Ciulla confirmed that Bulger and Flemmi played a significant role in the race-fixing conspiracy and that prosecutors were fully aware of the extent of Bulger and Flemmi’s activities. Interview with Anthony Ciulla (Dec. 5, 2002); see also J.M. Lawrence, *Mob Scene; Bulger May Stay Mum on Whitey*, BOSTON HERALD, Dec. 6, 2002, at 1.

³¹⁸ *Salemme*, 91 F. Supp. 2d at 201.

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.* at 202–03; Interview with Bob Long, Sergeant, Massachusetts State Police (Apr. 17, 2001).

³²² *Salemme*, 91 F. Supp. 2d at 208.

³²³ *Id.* at 209.

³²⁴ See *id.* at 208.

³²⁵ *Id.*

³²⁶ See *id.* at 208, 211–12; “The Justice Department’s Use of Informants in New England,” *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 272–73 (Dec. 5, 2002) (testimony of Michael Huff).

³²⁷ See *Salemme*, 91 F. Supp. 2d at 208–09.

operation and claims against Flemmi.³²⁸ Agent Connolly then, in turn, told Flemmi.³²⁹ Halloran was murdered on May 11, 1982.³³⁰ Shortly after Halloran's murder, John Callahan's body was found in the trunk of his car at Miami International Airport on August 4, 1982.³³¹ Callahan had been killed weeks earlier.³³² Callahan had been interviewed by the FBI in connection with the Wheeler murder.³³³ According to one former Miami Dade Police Detective, the Boston FBI Office also "stonewalled" Florida's efforts in investigating Flemmi's role in the Callahan murder.³³⁴

- According to *U.S. v. Salemme*,³³⁵ Brian Halloran was not the only informant that the FBI identified for Flemmi.³³⁶ FBI Special Agent H. Paul "Rico disclosed the identity of several informants to Flemmi" and FBI Special Agent John Connolly identified for "Flemmi at least a dozen individuals who were either FBI informants or sources for other law enforcement agencies."³³⁷ The purpose of these disclosures was so that Flemmi "could avoid making any unnecessary incriminating statements to other informants."³³⁸
- In mid-October 1984, John McIntyre, an engineer on a ship named the Valhalla, which was used in an attempt to deliver guns and ammunition from Massachusetts to the Irish Republican Army in Ireland, began providing information to local Massachusetts law enforcement about Flemmi's involvement in the Valhalla arms shipment.³³⁹ Local law enforcement told the FBI about McIntyre's cooperation.³⁴⁰ The FBI subsequently interviewed McIntyre regarding his allegations.³⁴¹ The FBI then allegedly told Flemmi about McIntyre's cooperation and claims.³⁴² "[D]espite the obvious potential for McIntyre's cooperation to result in several significant, if not sensational cases, no evidence has been presented that the FBI conducted any investigation based on McIntyre's charges concerning . . . Flemmi[.]"³⁴³ McIntyre disappeared around November 1984.³⁴⁴ His remains were found in a make-shift grave on January 14, 2000.³⁴⁵ Flemmi was later indicted for aiding and abetting in

³²⁸ See *id.*

³²⁹ See *id.*

³³⁰ See *id.* at 209–10.

³³¹ See *id.* at 210–13.

³³² See *id.* at 211.

³³³ See *Salemme*, 91 F. Supp. 2d at 209.

³³⁴ Interview with Shelton Merritt, former Detective, Metro Dade Police Dept. (Dec. 2, 2001) ("I was stonewalled and snowballed [by the FBI] and left to hang out and dry."); See also *Salemme*, 91 F. Supp. 2d at 211.

³³⁵ *Salemme*, 91 F. Supp. 2d at 213.

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.* at 213.

³⁴⁰ *Id.* at 214.

³⁴¹ *Id.*

³⁴² *Id.* at 214–15; see also Dick Lehr, *Mob Underling's Tale of Guns, Drugs, Fear Weeks Before His Death, McIntyre Felt Trapped*, BOSTON GLOBE, Feb. 27, 2000 at A1.

³⁴³ *Salemme*, 91 F. Supp. 2d at 215.

³⁴⁴ See Shelley Murphy, *Remains of Slay Victim Cremated*, BOSTON GLOBE, Mar. 15, 2001, at B3; *Salemme*, 91 F. Supp. 2d at 215.

³⁴⁵ Shelley Murphy, *3 Bodies Unearthed in Dorchester, Bulger Confidant is Said to Give Tip*, BOSTON GLOBE, Jan. 15, 2000, at A1; Dick Lehr, *Mob Underling's Tale of Guns, Drugs, Fear Weeks Before His Death, McIntyre Felt Trapped*, BOSTON GLOBE, Feb. 27, 2000 at A1.

McIntyre's murder.³⁴⁶ Moreover, notwithstanding other evidence demonstrating Flemmi's involvement with the Valhalla arms shipment, Flemmi was not charged in a prosecution that took place years later regarding the Valhalla.³⁴⁷

- In January 1984, FBI Special Agent John Connolly received reliable information that Stephen Flemmi was involved in an ongoing extortion of the owners of the South Boston Liquor Mart.³⁴⁸ However, the FBI did not investigate this extortion in any way.³⁴⁹
- In 1984 and 1985, the FBI told Stephen Flemmi that he was being targeted in a major Drug Enforcement Agency ("DEA") investigation, which included electronic surveillance.³⁵⁰ The DEA's "lengthy and expensive investigation was deemed unsuccessful and was eventually closed."³⁵¹
- In April 1985, FBI Supervisory Special Agent John Morris told Stephen Flemmi that "you can do anything you want as long as you don't clip anyone."³⁵²
- In the late 1980's, Stephen Flemmi was protected from being prosecuted for his role in the extortion of reputed drug dealer Hobart Willis.³⁵³
- In 1986, the FBI continued an investigation regarding payoffs to members of the Boston Police Department.³⁵⁴ Agent John Connolly forewarned Stephen Flemmi not to make incriminating statements to Boston Police Lieutenant James Cox, who was going to attempt to record conversations with Flemmi.³⁵⁵
- In 1988, the FBI received information implicating Stephen Flemmi in the Brian Halloran and Bucky Barrett murders.³⁵⁶ Notwithstanding receiving such significant information, this information "was not provided to any agents responsible for investigating those matters or indexed so that it could be accessed by such agents."³⁵⁷
- In the spring of 1988, FBI Special Agents Robert Jordan and Stanley Moody prepared an application for electronic surveillance targeting bookmaker John Baharoian, Stephen Flemmi, and others.³⁵⁸ Prior to the inception of the surveillance, Agents John Morris and John Connolly warned Flemmi about the planned surveillance.³⁵⁹ The surveillance produced evidence that led to the indictment of John Baharoian and others.³⁶⁰

³⁴⁶ *U.S. v. O'Neil*, 99-CR-10371-RGS, Superseding Indictment.

³⁴⁷ *Salemme*, 91 F. Supp. 2d at 215.

³⁴⁸ *Id.* at 210, 212.

³⁴⁹ *Id.*

³⁵⁰ *Id.* at 220-42.

³⁵¹ *Id.* at 242.

³⁵² *Id.* at 242-43.

³⁵³ *Id.* at 254-55.

³⁵⁴ *Id.* at 258.

³⁵⁵ *Id.*

³⁵⁶ *Id.* at 256-58.

³⁵⁷ *Id.* at 258.

³⁵⁸ *Id.* at 259.

³⁵⁹ *Id.*

³⁶⁰ *Id.*

However, because he was forewarned, Flemmi was not intercepted, and therefore not indicted.³⁶¹

- In 1988 or 1989, Agent John Connolly indirectly warned Stephen Flemmi through James Bulger that alleged extortion victim Timothy Connolly was cooperating with the FBI and would attempt to record conversations with Flemmi.³⁶²
- In 1992, the United States Attorney's Office began a grand jury investigation targeting Stephen Flemmi.³⁶³ From 1992 to 1995, Flemmi received frequent reports concerning the progress of the grand jury investigation from retired FBI Agent John Connolly, who was being fed information from his contacts at the FBI.³⁶⁴ Flemmi spoke to Connolly "constantly" concerning the ongoing grand jury investigation.³⁶⁵ Finally, on or about January 3, 1995, Connolly indirectly informed Flemmi, through James Bulger, that Flemmi was about to be indicted on or about January 10, 1995.³⁶⁶ However, despite the fact that he received the advance warning, Flemmi did not flee immediately and was arrested on January 5, 1995, prior to his indictment.³⁶⁷

Stephen Flemmi served as an FBI informant for thirty years.³⁶⁸ During that time, the FBI promised him protection.³⁶⁹ As discussed above, the FBI made good on this promise, protecting him from a long list of crimes, including murder, attempted murder, and even gun smuggling to a foreign country. Notwithstanding knowledge of his involvement in the Poulos and William Bennett murders, the maiming of attorney John Fitzgerald, and the certainty by at least one U.S. Attorney that he was a murderer, nothing was done until the mid-1990s to bring Stephen Flemmi to justice. To the contrary, extraordinary measures were taken to protect him. The protection of Stephen Flemmi is another unfortunate example of what happened in New England when the government used an "ends justifies the means" approach to law enforcement. No one disputes the proposition that destroying organized crime in the United States was an important law enforcement objective. However, the steps that were taken may have been more injurious than the results obtained. Along the way, lives were destroyed, witnesses were murdered, respect for the rule of law was eviscerated, and the government has been exposed to billions of dollars in potential civil liability.

9. The Misuse of the Flemmi Brothers as Informants: Two Human Perspectives

The FBI's misuse of informants had profound human consequences for a number of individuals. In the Deegan prosecution alone it appears that the death penalty was unfairly assessed and men innocent of the crime for which they were convicted died in

³⁶¹ *Id.*

³⁶² *Id.* at 263.

³⁶³ *Id.* at 294.

³⁶⁴ *Id.* at 295–96.

³⁶⁵ *Id.* at 296.

³⁶⁶ *Id.* at 297.

³⁶⁷ *Id.*

³⁶⁸ *Id.* at 148. At times he was technically closed as an informant. There appear to be few, if any, practical ramifications pertaining to these closures.

³⁶⁹ *Id.* at 151.

prison. The following testimony, however, provides an indication of the human suffering caused by the FBI and Justice Department's failure to police its own use of informants:

In returning from one of the visits before the trial of her father, [Joe Salvati's daughter Sharon—around 8 or 9 years old at the time] came home and asked her mother and then asked her father, daddy, what's the electric chair? They say you're going to get the electric chair. Are they giving you a present?³⁷⁰

Testimony of Victor Garo
Attorney for Joseph Salvati

* * *

The government stole more than 30 years of my life. . . . My life as a husband and father came to a tumbling halt. In order to clear my name, it has been a long and frustrating battle. Yet, through all the heartbreak and sometimes throughout the years, my wife and I have remained very much in love. Prison may have separated us physically, but our love has always kept us together mentally and emotionally. Our children have always been foremost in our minds. We tried our best to raise them in a loving and caring atmosphere even though we were separated by prison walls. More than once my heart was broken because I was unable to be with my family at very important times.³⁷¹

Testimony of Joseph Salvati

* * *

From October 25, 1967, the date my husband was arrested, until January 30, 2001, when all the charges were dropped, my life was extremely difficult. The government took away my husband and the father of our children in 1967. My world was shattered. This wonderful life that we shared was gone. Many people looked down on me. Children in the neighborhood would tease our kids. I did my best to comfort my children but no one was there to comfort me. Many a night I cried by myself, and I suffered in silence.³⁷²

* * *

From the very beginning of imprisonment, I knew that it would be important for the children to have constant contact with their family, with their father. And every weekend, you know, I'd dress up, pack a little lunch, and we'd

³⁷⁰ "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 32 (May 3, 2001) (testimony of Victor Garo).

³⁷¹ "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 39 (May 3, 2001) (testimony of Joseph Salvati).

³⁷² "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 43 (May 3, 2001) (testimony of Marie Salvati).

go off to see him for their hugs and their kisses and whatever went on. And he would give them a father's guidance, even though he was not home with them. Sometimes it took hours to get there, and every time you got there, you were all nervous.³⁷³

Testimony of Marie Salvati

* * *

My father's life represented what many consider to be the American ideal: vision, hard work, a good sense of opportunity and maybe a little bit of luck. . . . One Wednesday afternoon I received a call, telling me only that my father had been shot in the head The next day I had to repeatedly negotiate between the funeral home and my mother. She kept asking to see her husband. They kept asking for more time and finally, in desperation, asked me, "Do you realize where he was shot?" When we arrived at the funeral home to view my father I finally started to lose control. My mother kissed my father's body. I almost passed out fearing that part of dad's face would fall apart.³⁷⁴

Testimony of David Wheeler

The Committee regrets that it has been unable to receive testimony from more of the victims of Joseph Barboza, the Flemmis, and James Bulger. Their stories are all tragic, and the Committee, by quoting the above testimony, does not wish to indicate that any one set of circumstances is worse than another.

B. INTERFERENCE WITH STATE LAW ENFORCEMENT

The use of Joseph Barboza as a cooperating witness and the development of Jimmy and Stephen Flemmi as informants led to problems in other state law enforcement activities. In California, for example, Joseph Barboza committed a murder, for which federal law enforcement officials tried to help him escape the legal consequences. In Nevada, Oklahoma, and Florida, murders were committed apparently involving Stephen Flemmi. The ensuing investigations appear to have been hampered by federal law enforcement officials. In Connecticut, federal officials appear to have worked against a state-wide probe of organized crime in the jai alai industry. Finally, FBI agent H. Paul Rico—who was intimately involved with the development of Joseph Barboza as a cooperating witness and Jimmy and Stephen Flemmi as confidential informants—was found by the Supreme Court of Rhode Island to have suborned perjury and to have himself committed perjury. As a result, one participant in a homicide was released from prison.

This section discusses the intersection of state and federal law enforcement efforts, and how the use of Barboza and the Flemmis interfered with state efforts to enforce criminal laws.

³⁷³ *Id.*

³⁷⁴ "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 268–69 (Dec. 5, 2002) (testimony of David Wheeler).

1. California

The murder of Clay Wilson by Joseph Barboza, and the ensuing prosecution for this homicide present one of the more bizarre stories in the annals of federal law enforcement. Notwithstanding Barboza's past as a brutal killer, he was resettled in Santa Rosa, California, as the first member of the federal Witness Protection Program. Shortly thereafter, he murdered a local criminal named Clay Wilson. Once this murder was discovered and Barboza was charged with the crime, the federal government went to great lengths to help Barboza escape the consequences of his crime.

i. Joseph Barboza's Relocation to California

Following his testimony in the Raymond Patriarca, Jerry Angiulo, and Edward Deegan cases in 1967 and 1968, the FBI relocated Joseph Barboza to Santa Rosa, California, in April 1969. Barboza, also known as Joseph Baron, was given the name Joe Bentley. According to interviews by Committee investigators of FBI agents assigned to the Santa Rosa area at that time, the U.S. Marshals enrolled Barboza in a cooking school,³⁷⁵ and the FBI provided him with an automobile³⁷⁶ and took mail to him.³⁷⁷ Other than these minimal contacts, the agents said they had no contact with Barboza.³⁷⁸ In fact, Bill Baseman, the agent who ran the Santa Rosa FBI Field Office, said he did not want to have any contact with Barboza because he knew Barboza would get into trouble.³⁷⁹ FBI headquarters did not provide the Santa Rosa Office with any directions or instructions regarding Barboza and provided little or no information about Barboza's criminal background and cooperation with the government.³⁸⁰ Barboza's murderous past was clearly understood. One memorandum directed to FBI Director Hoover called Barboza "a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement representatives in [the Boston] area to be the most dangerous individual known."³⁸¹ Notwithstanding this belief, the FBI failed to inform local law enforcement of Barboza's presence in Santa Rosa.³⁸²

³⁷⁵ Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001). Special Agent Dennis Condon told Chuck Hiner that Barboza had testified and was in the Witness Protection Program. *Id.* Hiner described the cooking school as a "den of thieves." *Id.*

³⁷⁶ Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001).

³⁷⁷ Interview with Doug Ahlstrom, former Special Agent, Santa Rosa FBI Field Office (Aug. 28, 2001); Interview with Bill Baseman, former Special Agent, Santa Rosa FBI Field Office (Sept. 24, 2001).

³⁷⁸ Interview with Doug Ahlstrom, former Special Agent, Santa Rosa FBI Field Office (Aug. 28, 2001); Interview with Bill Baseman, former Special Agent, Santa Rosa FBI Field Office (Sept. 24, 2001); Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001).

³⁷⁹ Interview with Bill Baseman, former Special Agent, Santa Rosa FBI Field Office (Sept. 24, 2001).

³⁸⁰ Interview with Doug Ahlstrom, former Special Agent, Santa Rosa FBI Field Office (Aug. 28, 2001); Interview with Bill Baseman, former Special Agent, Santa Rosa FBI Field Office (Sept. 24, 2001); Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001).

³⁸¹ Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141). According to Vincent Teresa, Barboza was "dangerous. He was unpredictable. When he tasted blood, everyone in his way got it." VINCENT TERESA, *MY LIFE IN THE MAFIA* 167 (Doubleday & Company, Inc. 1973).

³⁸² "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?" *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 40 (Feb. 13, 2002) (testimony of Ed Cameron and Tim Brown).

Once settled in California, Barboza began making trips back to Massachusetts in violation of the terms of his parole.³⁸³ During these trips, Barboza negotiated with the mafia to recant his testimony in the Deegan trial in return for money.³⁸⁴ In May of 1970, Barboza met with an associate of New England Mafia boss Raymond L.S. Patriarca in Massachusetts. Barboza told Patriarca's associate that he would recant his testimony in exchange for \$500,000 and the legal services of F. Lee Bailey.³⁸⁵

In July of 1970, Barboza met with Bailey in New Bedford, Massachusetts.³⁸⁶ At this meeting, Barboza told Bailey that Henry Tameleo, Joe Salvati, Peter Limone, and Louie Greco were innocent of the Deegan murder.³⁸⁷ Furthermore, Barboza told Bailey that his testimony in the Patriarca case was largely fabricated and that FBI Agents H. Paul Rico and Dennis Condon assisted him with the fabrication.³⁸⁸ In light of these allegations, Bailey demanded that Barboza submit to a lie detector test.³⁸⁹

Before Bailey could begin documenting Barboza's perjured testimony, Barboza was arrested on July 17, 1970, in New Bedford, Massachusetts, and imprisoned on firearm and narcotics charges.³⁹⁰ Once the Massachusetts Parole Board learned of his arrest, Barboza's parole was revoked based on a provision of his parole that prohibited him from ever returning to Massachusetts.³⁹¹ On July 20, 1970, District Attorney Edmund Dinis dropped the firearms and narcotics charges purportedly due to constitutional problems arising because Barboza had no legal representation at his arraignment.³⁹² However, according to Dinis, federal authorities had contacted him before he dropped the charges, stating that they "were concerned with [Barboza's] welfare" and that "[h]e [Barboza] ha[d] been most cooperative with them and given them vital testimony."³⁹³ After the firearm and narcotics charges were dropped, Barboza was imprisoned in Massachusetts' Walpole State Prison where he was held pending charges for his parole violation.³⁹⁴

³⁸³ One of the conditions of Barboza's parole was that he not return to Massachusetts. See Edward Counihan, *Informer Baron Arrested, Parole Revoked*, BOSTON GLOBE, July 18, 1970 (Exhibit 316).

³⁸⁴ Trial Transcript, *California v. Bentley* (Cal. Super. Ct. Dec. 7, 1971) at 192 (cross-examination of Joseph [Barboza]) (Exhibit 433). Another alleged reason for Barboza's return to Massachusetts concerned his apparent attempts to sell bonds or stock certificates that were stolen in California.

³⁸⁵ *Id.* at 196–97; Interview with James Southwood, former reporter, BOSTON HERALD TRAVELER (Sept. 28, 2001).

³⁸⁶ "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 122 (May 3, 2001) (testimony of F. Lee Bailey); see also Affidavit of Francis Lee Bailey (Oct. 16, 1978) (Exhibit 668).

³⁸⁷ "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 122 (May 3, 2001) (testimony of F. Lee Bailey); see also Affidavit of Francis Lee Bailey (Oct. 16, 1978) (Exhibit 668).

³⁸⁸ "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 122–23 (May 3, 2001) (testimony of F. Lee Bailey).

³⁸⁹ *Id.* at 123.

³⁹⁰ *Baron Seized, Held on Arms, Pot Charges*, BOSTON GLOBE, July 17, 1970 (Exhibit 316).

³⁹¹ *Id.*

³⁹² Edward Counihan, *Charges Against Baron Dropped*, BOSTON GLOBE, July 20, 1970 (Exhibit 317).

³⁹³ *Id.*

³⁹⁴ Edward Counihan, *Court Asked to Release Baron from Walpole*, BOSTON GLOBE, Aug. 11, 1970 (Exhibit 325).

Barboza's arrest prompted FBI Director Hoover's office to relay the following information to Attorney General John Mitchell:

Without the knowledge of the Strike Force, Barboza returned to New Bedford, Massachusetts, and was arrested by the New Bedford Police Department[.]

* * *

On July 20, 1970, the charges against Barboza were nolle prossed by the District Attorney's Office in that Barboza's rights had been violated as he was not represented by counsel.

* * *

Our Boston office has advised that the Strike Force in Boston and the District Attorney's Office, Suffolk County, are attempting to have Barboza transferred from the Massachusetts Correctional Institution because his life could be in danger from other inmates.

This matter will be followed and you will be advised of additional pertinent information.³⁹⁵

Though FBI Director Hoover's statement that Barboza returned to Massachusetts without the knowledge of the Strike Force may have been true, FBI agents certainly knew that Barboza had been traveling to Massachusetts in violation of his parole terms. For example, in February 1970, FBI Special Agent Paul Rico warned Barboza to leave Massachusetts because of threats against his life.³⁹⁶

Despite Barboza's arrest, F. Lee Bailey continued to extract information from Barboza concerning his testimony in the Deegan trial. On July 28, 1970, Barboza signed an affidavit stating, "I wish to recant certain portions of my testimony during the course of the above-said trial [*Commonwealth v. French*] insofar as my testimony concerned the involvement of Henry Tameleo, Peter J. Limone, Joseph L. Salvati and Lewis [sic] Grieco [sic] in the killing of Teddy Deegan."³⁹⁷ Bailey, attempting to buttress the credibility of Barboza's affidavit, scheduled a lie-detector test for Barboza.³⁹⁸ In the meantime, Barboza began giving Bailey details of the Deegan

³⁹⁵ Letter from J. Edgar Hoover, Director, FBI, to John Mitchell, Attorney General, U.S. Dept. of Justice (July 22, 1970) (Exhibit 320).

³⁹⁶ Memorandum from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James F. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Nov. 29, 1971) (Exhibit 426).

³⁹⁷ Affidavit of Joseph Baron (July 28, 1970) (Exhibit 321). On August 3, 1970, Edward Harrington, Deputy Chief of the Strike Force, met with Suffolk County District Attorney Garrett Byrne and Jack Zalkind, the prosecutor of the Deegan case, to discuss "the affidavit signed by Joseph Barboza Baron and filed in connection with the motion for a new trial on the Deegan murder case." FBI Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Aug. 3, 1970) (Exhibit 323). At the meeting, Byrne told Harrington that Barboza's affidavit was insufficient to warrant a hearing because it contained only a general statement. *Id.*

³⁹⁸ "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 123 (May 3, 2001) (testimony of F. Lee Bailey); see also Memorandum from Walter T. Barnes and Edward F. Harrington, Special Attorneys, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Aug. 28, 1970) (Exhibit 330).

murder and the circumstances surrounding his recantation. Bailey memorialized this information in a memorandum to Deegan defense attorney Joseph Balliro:

As you recall, when I met with [Barboza] at his request in New Bedford, he stated that he had felt for some time that he should make a direct effort to right the injustice which his testimony had caused. He indicated that he had been assured all along that (especially in the murder cases) a conviction was unlikely, and after the conviction occurred he was told to expect that due to trial errors the Supreme Court would reverse the cases, and of course there would never be a re-trial; therefore, no permanent harm would be done to anyone whereas the government would have accomplished its primary objection: much publicity about prosecuting organized crime.

* * *

Nonetheless, after many hours of conversation with [Barboza] at Walpole I am convinced that I have most of the details of what actually took place.

* * *

It appears that Mr. French did in fact shoot Deegan, that Mr. Cassesso was present with [Barboza] in the car and conspired to kill Stathopoulos but was not involved in the Deegan killing, and that Salvati and Greco were not present at all. Further, Tamelio [sic] and Lemone [sic] had nothing to do with arranging Deegan's murder nor had they any reason to believe that it was going to occur. The person sitting in the rear of the automobile which the Chelsea Police Captain saw was in fact bald and was Vincent Felemi [sic]. Romeo Martin in fact shot Deegan but the role ascribed to Greco as the third assailant of Deegan in fact involved another man whose last name begins with "C" as you had earlier suggested to me.³⁹⁹

Barboza told authorities that he was recanting his testimony in exchange for payment from the mafia. Yet, the information Barboza divulged to Bailey regarding the Deegan murder was more consistent with police reports on the murder, information received from informants, and information the FBI received independent of Barboza, both before and after the murder, than it was with Barboza's testimony at the Deegan trial.

Barboza's arrest, however, presented the immediate problem of a potential prison sentence. On August 20, 1970, Barboza was charged with violating his parole, which carried a four to five year prison sentence. Five days later, on August 25, 1970, Bailey petitioned the court to allow Barboza to take a lie detector test.⁴⁰⁰ That same day, Walter Barnes, Special Attorney of the Organized Crime and Racketeering Section, was told that Barboza requested a meet-

³⁹⁹ Memorandum from Lee Bailey to Joe Balliro (Aug. 27, 1970) (Exhibit 328).

⁴⁰⁰ Edward Coughlin, *Hearing on Barboza Test Continued, Starts Row*, BOSTON GLOBE, Aug. 25, 1970 (Exhibit 326).

ing.⁴⁰¹ Barnes and his colleague, Edward Harrington, met with Barboza at Walpole State Prison on August 28, 1970. Barnes and Harrington's memorandum of the meeting states that Barboza:

Requested Barnes and Harrington to relocate his wife and family from California in light of the fact that their whereabouts had become public knowledge, having been disclosed by his counsel, F. Lee Bailey, at a prior court proceeding. Barnes and Harrington did not make any response to this request. [Barboza] also requested that his probation revocation warrant be withdrawn. Barnes and Harrington advised [Barboza] that they had no control over the Massachusetts Parole Board and that they could make no promises in this regard.

* * *

[Barboza] stated that it was his original intention to inveigle members of the underworld into giving him money on the pretext that he would recant his testimony given in previous trials and that, when he received the money, he would leave the area without recanting;

[Barboza] also stated that his counsel, F. Lee Bailey, "made him sign the affidavit" and that "they" have sent his wife money in return for his signing the affidavits[.]

* * *

[Barboza] also advised that his testimony in the Deegan case was truthful and that he had signed the affidavits only for money; that he is not going to take the lie-detector test on August 31, 1970, for he feels that once he has taken the test Bailey will have no further use for him and that his life will be in danger; that he will tell Bailey that he had spoken with Barnes and Harrington merely to tell them that, if they were going to pressure him by initiating criminal charges, he would open up a "Pandora's box."

* * *

Barnes and Harrington told [Barboza] that they would and could make no promises to him but that they would merely pass the results of their conversation on to [Suffolk County] District Attorney Garrett Byrne, which was done by Harrington at approximately 3:30 P.M. on August 28, 1970.⁴⁰²

⁴⁰¹ Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Aug. 25, 1970) (Exhibit 327). The memorandum states that Barboza wanted FBI Special Agent Dennis Condon to attend the meeting but that "Condon will not see Barboza;" *see also* Memorandum from Walter T. Barnes and Edward F. Harrington, Special Attorneys, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Aug. 28, 1970) (Exhibit 330).

⁴⁰² Memorandum from Walter T. Barnes and Edward F. Harrington, Special Attorneys, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Aug. 28, 1970) (Exhibit 330).

According to both this memorandum and Harrington's testimony before the Committee, neither Barnes nor Harrington gave Barboza any instructions or guidance about recanting his testimony or taking the lie detector test.⁴⁰³ In a subsequent letter, however, Barboza appears to be referring to advice that Barnes and Harrington provided on this matter: "Ted, when you [and] Walter came down to see me, you and Walter asked me not to do something and I didn't. How long can the little money I bled out of those creeps last, what'll happen to my wife and babies then?"⁴⁰⁴

Barboza also told Barnes and Harrington that F. Lee Bailey "made him sign the affidavit."⁴⁰⁵ However, when Barboza was prosecuted for murder the following year, the prosecutor asked Barboza whether the affidavit was truthful, and Barboza replied, "It wasn't clearly understood by me."⁴⁰⁶

The Suffolk County District Attorney's Office had its own reasons for wanting to keep Barboza in custody. In August 1970, Henry Tameleo, Ronnie Cassesso, Peter Limone, and Louis Greco filed motions for new trials.⁴⁰⁷ According to the FBI, the Suffolk County District Attorney planned to delay any proceedings against Barboza for violating his parole to ensure Barboza's presence in case the Deegan defendants were granted new trials.⁴⁰⁸ Thus, Barboza's fate would remain uncertain until the motions by the Deegan defendants were settled. The FBI's detailed understanding of what was happening to the Deegan defendants also indicates that the Deegan murder prosecution was a great deal more important than former Justice Department officials have depicted it to be.

During this time, Barboza was in contact with both organized crime figures and federal authorities about recanting his testimony in the Deegan murder trial. Barboza had two choices: either he could recant his testimony and possibly receive money from the mafia, or he could reassert his trial testimony and possibly avoid jail. Before he made his decision, law enforcement learned that Barboza had committed a murder in California while in the Witness Protection Program.

ii. *The Murder of Clay Wilson*

In October 1970, the Santa Rosa Police Department received letters from William Geraway and Lawrence Woods, two inmates in Walpole State Prison in Massachusetts, stating that Joe Barboza had committed a murder in California.⁴⁰⁹ Geraway had occupied the prison cell next to Barboza. A letter sent by Geraway and received by the Santa Rosa Police Department on October 1, 1970,

⁴⁰³ *Id.*; see also "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 191-92 (Feb. 14, 2002) (testimony of Judge Edward Harrington).

⁴⁰⁴ Letter from Joseph Barboza to Edward Harrington, Special Attorney, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Sept. 28, 1970) (Exhibit 342).

⁴⁰⁵ Memorandum from Walter T. Barnes and Edward F. Harrington, Special Attorneys, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Aug. 28, 1970) (Exhibit 330).

⁴⁰⁶ Trial Transcript, *California v. Bentley* (Cal. Super. Ct. Dec. 8, 1971) at 276 (cross-examination of Joseph Barboza) (Exhibit 433).

⁴⁰⁷ *Limone Files Appeal of Deegan Slay Conviction*, BOSTON GLOBE, July 30, 1970; *Appeals for 4th in Slaying*, BOSTON GLOBE, Aug. 18, 1970.

⁴⁰⁸ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Sept. 21, 1970) (Exhibit 341).

⁴⁰⁹ See Affidavit of Edwin F. Cameron (Oct. 13, 1970) (Exhibit 343).

claimed that Barboza had described in extensive detail how he murdered an individual in the first week of July 1970.⁴¹⁰ Based on Geraway and Wood's letters and the disappearance of a man named Clay Wilson, Sonoma County law enforcement personnel began an investigation.⁴¹¹

From the outset, the seasoned, veteran investigators from Sonoma County were not comfortable working with the FBI in the Wilson murder investigation. Ed Cameron, Investigator for the Sonoma County District Attorney's Office, stated that the FBI was not forthcoming with information about Barboza at the outset of their investigation.⁴¹²

Although not officially involved in the Wilson murder investigation, the FBI followed the investigation intently. On October 5, 1970, the San Francisco office informed FBI Special Agent Dennis Condon of Geraway's letter to the Santa Rosa police.⁴¹³ Condon relayed this information to the Special Agent in Charge of the Boston office,⁴¹⁴ who then passed the information on to FBI Director Hoover that same day.⁴¹⁵ The San Francisco office informed the Boston office and Director Hoover that it was "closely following [the Wilson] matter with local authorities."⁴¹⁶ The Boston office requested that the San Francisco office apprise both Boston and FBI headquarters of all developments in the Wilson case.⁴¹⁷ A memo from FBI Director Hoover then instructed the Boston and San Francisco offices to advise headquarters of the status of any prosecutions pending against Barboza.⁴¹⁸

Sonoma County Investigator Ed Cameron traveled to Boston to learn more about Barboza and to interview William Geraway. Cameron met with FBI Special Agent Dennis Condon for a briefing on Barboza, but Condon provided only publicly available information.⁴¹⁹ Cameron received more assistance and information from John Reagan of the Massachusetts State Police than from the FBI,

⁴¹⁰ See Memorandum from Dennis M. Condon, Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (Oct. 5, 1970) (Exhibit 345).

⁴¹¹ While everyone involved with Geraway stated that his credibility was questionable, Geraway provided very precise details about the Wilson murder that the police were able to corroborate. See Letter from Tim R. Brown, Detective Sergeant, Sonoma County Sheriff's Office, to William R. Geraway (Jan. 14, 1972) (Exhibit 454). Geraway told the authorities that Wilson was shot in the head, bound, and buried in a shallow grave. *Id.* He also provided the names of two female witnesses to the murder, the location of the witnesses' residence, a description of their vehicles, and the names of one of the witness' children and pets. *Id.* Lawrence Wood later denied that Barboza told him details of the murder and said he learned the details only from Geraway.

⁴¹² "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 37–39 (Feb. 13, 2002) (testimony of Ed Cameron); see also Interview with Tim Brown, former Detective Sergeant, Sonoma County Sheriff's Office (Aug. 30, 2001).

⁴¹³ Memorandum from Dennis M. Condon, Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (Oct. 5, 1970) (Exhibit 345).

⁴¹⁴ *Id.*

⁴¹⁵ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Oct. 5, 1970) (Exhibit 344).

⁴¹⁶ Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI, and Boston FBI Field Office (Oct. 13, 1970) (Exhibit 352).

⁴¹⁷ Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI, and San Francisco FBI Field Office (Oct. 15, 1970) (Exhibit 355).

⁴¹⁸ Memorandum from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office (Dec. 23, 1970) (Exhibit 373).

⁴¹⁹ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 37 (Feb. 13, 2002) (testimony of Edwin Cameron).

which had harbored Barboza for the past four years.⁴²⁰ Cameron, who spent fifteen years in law enforcement as a police officer and then as an investigator with the District Attorney's Office, said that he had a bad feeling about the FBI in this case and was baffled as to why another law enforcement agency would not assist his investigation.⁴²¹ In fact, Cameron's intuition about the FBI's malfeasance led him to take special precautions to determine whether someone was tampering with papers left in his hotel room.⁴²² Although he did not know who was responsible, he told the Committee that he believed his briefcase was searched at a time when it was supposed to be securely locked in his room.⁴²³ Cameron's FBI contacts were Special Agents Rico and Condon.⁴²⁴

After returning to California, Cameron met with the prosecution team to discuss the status of the investigation. The team decided that Cameron should call Agent Condon to request records on Barboza. Cameron placed numerous telephone calls to Condon requesting the records, but Condon never returned his calls or produced the records.⁴²⁵

In the meantime, Detective Sergeant Tim Brown pursued the Barboza investigation for the Sonoma County Sheriff's Office. Prior to the discovery of the Wilson murder, Brown had routine contacts with FBI Special Agent Doug Ahlstrom of the Santa Rosa FBI Office. Agent Ahlstrom apparently became concerned after the sheriff's office received the letters from the two inmates regarding the Wilson murder. According to the police report on the murder, Agent Ahlstrom accompanied Detective Sergeant Brown to the home of the two eyewitnesses, Paulette Ramos and Clay Wilson's wife, Dee Wilson.⁴²⁶ Ahlstrom denied to Committee investigators that he went to the house in connection with the Wilson murder investigation, saying it concerned an unrelated matter.⁴²⁷

Law enforcement in Sonoma County was quickly able to corroborate the details provided by the inmates' letters. On October 12, 1970, investigators discovered Clay Wilson's body exactly where Geraway said it would be located.⁴²⁸ Over the next several days, the FBI learned that both eyewitnesses, Dee Wilson and Paulette Ramos, told local authorities that they saw Barboza shoot Wilson.⁴²⁹ Barboza was charged with first degree murder, a charge carrying a possible death penalty in California. He was then turned over to California authorities in late February 1971⁴³⁰ and entered a plea of not guilty on March 1, 1971.⁴³¹

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.* at 34.

⁴²³ *Id.*

⁴²⁴ *Id.* at 33.

⁴²⁵ *Id.* at 39.

⁴²⁶ Sonoma County Sheriff's Office Police Report on the Murder of Clayton Rickey Wilson (Oct. 22, 1970) (Exhibit 358).

⁴²⁷ Interview with Doug Ahlstrom, former Special Agent, Santa Rosa FBI Field Office (Aug. 28, 2001).

⁴²⁸ Letter from Tim R. Brown, Detective Sergeant, Sonoma County Sheriff's Office, to William R. Geraway (Jan. 14, 1972) (Exhibit 454); Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI (Oct. 13, 1970) (Exhibit 352).

⁴²⁹ *Id.*; Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI, and Boston FBI Field Office (Oct. 16, 1970) (Exhibit 357).

⁴³⁰ Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Feb. 23, 1971) (Exhibit 379).

⁴³¹ *Baron Pleads Not Guilty*, Mar. 1, 1971 (Exhibit 382) (newspaper source illegible).

Once Barboza was in the custody of Sonoma County law enforcement, Detective Sergeant Brown began meeting with Agent Ahlstrom several times a week to discuss any developments. One reason for their continual contacts was the fact that Brown began to surreptitiously record Barboza's conversations with visitors to his prison cell upon learning that a known bookmaker named Theodore Sharliss, also known as Jimmy Chalmis, was frequently visiting Barboza.⁴³² Whenever the recordings yielded information Brown thought would be of interest to the FBI, he made a cassette tape of the relevant portion and gave it to Agent Ahlstrom.⁴³³ In fact, Brown stated that one of the tapes helped solve a murder in Las Vegas.⁴³⁴

Even though Sonoma County investigators shared information on the investigation with the FBI, the FBI failed to reciprocate and assist Sonoma County. Three or four months prior to the commencement of Barboza's trial, Brown was told that three individuals were coming from the East Coast to kill the two witnesses to the Wilson murder.⁴³⁵ Brown reached out to the FBI to identify the potential killers, but he received no response.⁴³⁶ Instead, non-FBI sources gave Brown the name of a Boston attorney who in turn provided the names of the assassins sent to the West Coast.⁴³⁷ Brown told the Committee that he was worried his two eye-witnesses would be murdered, yet federal law enforcement officials refused to provide assistance.⁴³⁸

Eventually, Agent Ahlstrom began to give Detective Sergeant Brown some information. Agent Ahlstrom informed Brown that three federal officials would testify on Barboza's behalf.⁴³⁹ Brown believed that Agent Ahlstrom was unhappy with the fact that the federal officials were going to assist Barboza.⁴⁴⁰ Through their constant contact, Brown learned more about Barboza from Agent Ahlstrom than from any other source.⁴⁴¹

Before Barboza was extradited to California in late February 1971, he extracted a promise from Edward Harrington, Attorney-in-Charge of the Organized Crime and Racketeering Section in Boston. In a letter to Harrington on March 7, 1971, Barboza stated, "You promised me you'd be down two weeks after I left. . . . [P]lease come down like you promised me, this can throw my case wide open[.]"⁴⁴² Harrington did indeed visit Barboza in his Califor-

⁴³² "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 54 (Feb. 13, 2002) (testimony of Tim Brown).

⁴³³ *Id.* at 55. The Committee was unable to obtain any of the tapes of the visits to Barboza either from the Sonoma County Sheriff's Office or the FBI.

⁴³⁴ *Id.* at 54.

⁴³⁵ *Id.* at 48, 89. Brown believes that this information was provided to him by William Geraway. *Id.*

⁴³⁶ *Id.* at 89.

⁴³⁷ *Id.* at 48, 89. Brown believes that this information was provided to him by William Geraway. *Id.* Although the police tracked the alleged killers to their last known address in California, the men were never apprehended. The two witnesses were unharmed.

⁴³⁸ *Id.* at 89.

⁴³⁹ *Id.* at 49.

⁴⁴⁰ *Id.*

⁴⁴¹ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 43 (Feb. 13, 2002) (testimony of Tim Brown).

⁴⁴² Letter from Joe Barboza to Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Mar. 7, 1971) (Exhibit 385).

nia prison cell, and he explained his visit in a memorandum to his superior, James Featherstone:

Government witnesses John J. Kelley and Vincent C. Teresa have advised the writer that the reason that they decided to cooperate with the government was the government's treatment of [Barboza] while he was in protective custody and because the government fulfilled their obligations to him.

* * *

In keeping with the government's obligation to [Barboza], I have assured [Barboza] that this office would take all proper steps to insure that he receives a fair and impartial trial on his pending murder charge. This obligation must be kept in view of the fact that many law enforcement officials in the Boston area consider that the pending murder charge has been concocted by the underworld as a means of retaliating against [Barboza].

* * *

This trip to confer with [Barboza] is important to the interests of the government in that it is a fulfillment of this office's commitments to do all within its power to insure that [Barboza] suffers no harm as a result of his cooperation with the federal government.

The writer will do nothing to attempt to dissuade the prosecution from bringing its case but will alert them of the possibility that the murder is a Mafia frame. The fulfillment of this obligation is also in the practical interests of the government as [Barboza] may otherwise determine that the government has failed him in his time of need and, it is my judgment, that he will then retaliate against the government by submitting false affidavits to the effect that his testimony in the Patriarca and Deegan cases was in fact false, and thus tarnish those most significant prosecutions.⁴⁴³

Harrington visited Barboza in California on March 25, 1971, and Barboza told Harrington that he had indeed killed Wilson and was not being framed by the Mafia.⁴⁴⁴ Barboza told Harrington that he shot Wilson in self-defense.⁴⁴⁵ However, Harrington admitted before the Committee that he was not convinced by Barboza's claim of self defense:

⁴⁴³Memorandum from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 23, 1971) (Exhibit 386).

⁴⁴⁴"The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 163-64 (Feb. 14, 2002) (testimony of Judge Edward Harrington); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001).

⁴⁴⁵"The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 164 (Feb. 14, 2002) (testimony of Judge Edward Harrington).

Judge HARRINGTON: Well, I have to reconstruct it. But in essence, I wanted to find out whether he was framed or was he involved in it.

Mr. TIERNEY: So he told you he was involved in it, he was guilty, right?

Judge HARRINGTON: No. He told me that it was self-defense.

Mr. TIERNEY: But then you became familiar with the circumstances of the case and you did not believe that for a second.

Judge HARRINGTON: It was irrelevant. I was out there—

Mr. TIERNEY: Please, Judge. You did not believe it. You are a seasoned attorney at that time, you did not believe that at all, right?

Judge HARRINGTON: Well, if forced to answer, I would say I would have thought that he killed him.⁴⁴⁶

Barboza's admission that he shot Wilson and was not being framed by the Mafia still did not prevent the Justice Department and the FBI from continuing to assist him. Upon his return from California, Harrington again wrote his boss, Deputy Chief of the Organized Crime and Racketeering Section James Featherstone, to report on the results of his trip.⁴⁴⁷ Harrington stated that he met with Sonoma County District Attorney Kiernan Hyland and assured him that the Justice Department was not attempting to interfere with the prosecution.⁴⁴⁸ Rather, the Justice Department was merely fulfilling its promise to Barboza to inform the Sonoma County District Attorney's Office of the possibility that the Mafia framed Barboza for the Wilson murder.⁴⁴⁹ Remarkably, in the same memorandum, Harrington stated that he told Barboza's defense attorney, Marteen Miller, that FBI Agents Rico and Condon, along with John Doyle, Chief Investigator for the Suffolk County District Attorney's Office, were "available to testify on behalf of [Barboza], if subpoenaed, as they possess information which would tend to discredit the veracity of prospective state witnesses Geraway and Wood."⁴⁵⁰

As Harrington stated in his memorandum, he met with District Attorney Hyland.⁴⁵¹ Yet, the meeting was apparently more eventful than Harrington recalled. Hyland requested to meet with Harrington after learning from jail officials that Harrington had visited

⁴⁴⁶ *Id.* at 163–64.

⁴⁴⁷ Memorandum from Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 31, 1971) (Exhibit 392).

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.* At the end of the memorandum to Featherstone, Harrington said that Barboza told him that the "underworld" would take no steps to try to overturn the Deegan murder convictions until Barboza was found guilty of the Wilson murder. At that time, the underworld would then offer him the money he would need to support his family from prison in return for affidavits disavowing his testimony in the Deegan trial. However, it should be noted that Barboza began negotiating with the underworld to change his testimony, including executing an affidavit renouncing certain portions of his testimony, before the Wilson murder was ever discovered.

⁴⁵¹ *Id.*

Barboza.⁴⁵² According to Cameron, who attended the brief meeting, Hyland was angry that a prominent Justice Department official would visit a prisoner without telling the district attorney the purpose of his visit.⁴⁵³ Thereafter, the prosecutors prevented federal officials from having any more clandestine visits with Barboza.⁴⁵⁴

In the same memorandum in which Harrington reported that the Justice Department would not interfere with Barboza's prosecution, Harrington explicitly stated that the Justice Department, the FBI, and the Suffolk County District Attorney's Office would be available to undermine the only two witnesses who were able to speak about Barboza's confession to the Wilson murder.⁴⁵⁵ Harrington's statement that they should ensure that Barboza "suffers no harm as a result of his cooperation with the federal government"⁴⁵⁶ appears to be an accurate description of the Justice Department's actions, and the fact that federal law enforcement personnel were preparing to undermine a California murder prosecution appears to have been a matter of no concern.

iii. The Clay Wilson Murder Trial in California

Barboza's first degree murder trial began on October 19, 1971. At the beginning of the trial, Marteen Miller, Barboza's defense attorney, stated his intention to call Strike Force Attorney Edward Harrington and FBI Agents H. Paul Rico and Dennis Condon as witnesses for Barboza.⁴⁵⁷ Kiernan Hyland, the Sonoma County District Attorney, upset that federal officials were being called to testify on Barboza's behalf, sent letters to FBI Director J. Edgar Hoover and Attorney General John Mitchell arguing:

[The intention of the defense to call Harrington, Rico, and Condon] is disconcerting for the prosecution because it presents a picture of a house divided against itself. The murder for which we are prosecuting [Barboza] has nothing to do with his Mafia connections. When and if [Mr. Harrington and the FBI agents testify as defense witnesses], it would be appreciated [if they] would do me the courtesy of contacting me first and allowing me to interview [them] concerning [their] possible testimony.⁴⁵⁸

Harrington wrote another memorandum to James Featherstone in late November 1971, outlining the proposed testimony of Agent

⁴⁵² Letter from Kiernan Hyland, District Attorney, Sonoma County, to J. Edgar Hoover, Director, FBI (Oct. 26, 1971) (Exhibit 418); Letter from Kiernan Hyland, District Attorney, Sonoma County, to John Mitchell, Attorney General, U.S. Dept. of Justice (Oct. 26, 1971) (Exhibit 419).

⁴⁵³ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 55 (Feb. 13, 2002) (testimony of Ed Cameron).

⁴⁵⁴ *Id.*

⁴⁵⁵ Memorandum from Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 31, 1971) (Exhibit 392).

⁴⁵⁶ Memorandum from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 23, 1971) (Exhibit 386).

⁴⁵⁷ Bony Saludes, *The Defense Strategy: Mafia Planned to Kill Baron*, PRESS DEMOCRAT, Oct. 24, 1971 (Exhibit 417).

⁴⁵⁸ Letter from Kiernan Hyland, District Attorney, Sonoma County, to J. Edgar Hoover, Director, FBI (Oct. 26, 1971) (Exhibit 418); Letter from Kiernan Hyland, District Attorney, Sonoma County, to John Mitchell, Attorney General, U.S. Dept. of Justice (Oct. 26, 1971) (Exhibit 419).

Rico, Agent Condon, and himself.⁴⁵⁹ According to Harrington, he would say that Barboza had testified against underworld figures in state and federal trials, was placed in protective custody and relocated to California under an assumed name, and wanted to carry a gun but his request was denied.⁴⁶⁰ Harrington stated that Agents Rico and Condon would testify that the Mafia both in Massachusetts and California had threatened Barboza's life and that William Geraway was known to be a liar.⁴⁶¹

On November 17, 1971, FBI Director Hoover's office informed the Boston and Miami offices that Special Agents Condon and Rico were to comply with subpoenas demanding their appearance at the Wilson trial in California.⁴⁶² On December 2, 1971, the Attorney General gave Special Agents Rico and Condon authority to testify in the Clay Wilson murder trial. This authority, however, was limited to testifying about threats made in Massachusetts and California on Barboza's life.⁴⁶³ The Attorney General's letters to the agents also contained the following prohibition: "You may not disclose any other information or produce any material acquired as a result of your official duties or because of your official status[.]"⁴⁶⁴ On the same day, the Attorney General authorized Harrington to testify in the Wilson case regarding Barboza's testimony against individuals in the Mafia, his protective custody, his relocation with an assumed name, his entry into a cooking school, and Harrington's denial of Barboza's request to carry a gun.⁴⁶⁵ The Attorney General's letter to Harrington carried the same restriction as the letters to the FBI agents.⁴⁶⁶

Harrington and Condon both told the Committee that they appeared as witnesses for Barboza because they received subpoenas, implying that they had no choice in the matter.⁴⁶⁷ While it is true that the three federal officials were subpoenaed to testify on Barboza's behalf, it was disingenuous to state that they were forced

⁴⁵⁹Memorandum from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James F. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Nov. 29, 1971) (Exhibit 426).

⁴⁶⁰*Id.* The alleged request by Barboza to carry a gun because his life was in danger would have bolstered the defense's argument that Barboza shot Wilson in self-defense.

⁴⁶¹*Id.* In the memorandum, Harrington stated that Agent Rico told Barboza on February 3, 1970, that he should leave Massachusetts because the Mafia knew he was in Massachusetts and two individuals were going to kill him. The problem with this admission by Harrington was that Barboza's presence in Massachusetts was a direct violation of his parole agreement with the state, which required that Barboza not return to Massachusetts. Thus, the Justice Department knew that Barboza was violating the terms of his parole. There is no indication that this was made known to state authorities. In July of 1970, Barboza was arrested in New Bedford, Massachusetts, on firearm and narcotics charges. The charges were dropped, but Barboza was held because his parole had been revoked for re-entering Massachusetts.

⁴⁶²Teletype from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office, and Special Agent in Charge, Miami FBI Field Office (Nov. 17, 1971) (Exhibit 423).

⁴⁶³Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to H. Paul Rico, Special Agent, Miami FBI Field Office (Dec. 2, 1971) (Exhibit 429); Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to Dennis Condon, Special Agent, Boston FBI Field Office (Dec. 2, 1971) (Exhibit 430).

⁴⁶⁴*Id.* Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to H. Paul Rico, Special Agent, Miami FBI Field Office (Dec. 2, 1971) (Exhibit 429).

⁴⁶⁵Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 2, 1971) (Exhibit 431).

⁴⁶⁶*Id.*

⁴⁶⁷"The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 137-38 (Feb. 14, 2002) (testimony of Judge Edward Harrington); Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (Feb. 21, 2002) at 107.

to appear because of the subpoenas because Harrington had previously volunteered their services to Barboza's defense attorney.⁴⁶⁸ Furthermore, it is inconceivable that the defense would have called federal law enforcement officials unless the defense was certain that the officials would not harm the defendant on either direct questioning or cross-examination. According to Barboza's attorney, the FBI had agreed to testify in support of Barboza.⁴⁶⁹

During the trial, Lieutenant Ed Maybrun of the Sonoma County Sheriff's Office received a telephone call from Lawrence W. Brown of New Bedford, Massachusetts, who said he read in the newspaper about some items the sheriff's office was seeking for the Barboza trial.⁴⁷⁰ According to Lieutenant Maybrun, Lawrence Brown, also known as Lawrence Hughes, stated that he had received some bonds or stock certificates from Barboza and he wished to speak to someone handling the Barboza case.⁴⁷¹ The issue of the stolen bonds or stock certificates was important to the prosecution's contention that Barboza murdered Wilson over the stolen bonds and not in self-defense. The prosecutors, therefore, called Lawrence Hughes to testify at the Barboza trial about the stolen bonds he received from Barboza.⁴⁷² Hughes, who was already known by the FBI, had become an obstacle in the federal government's attempt to help Barboza.

Lawrence Hughes's injection into the Barboza murder trial revealed the lengths to which the Justice Department and the FBI would go in order to help Barboza. When the prosecutor informed federal officials that Hughes was being called as a witness against Barboza, the San Francisco FBI office immediately notified FBI Director Hoover's office.⁴⁷³ As the teletype revealed, the FBI had known about Hughes since September of 1970 when Hughes contacted the Boston FBI office to inform it of Barboza's meetings in Massachusetts with Mafia representatives to negotiate the recantation of his testimony in the Deegan trial in exchange for money.⁴⁷⁴ In fact, after Hughes approached the FBI with information about Barboza's meetings with the Mafia, Edward Harrington wrote a letter to Gerald Shur at the Criminal Division of the Justice Department requesting help for Hughes. The letter stated:

It is requested that employment be procured for Lawrence P. Hughes. Mr. Lawrence P. Hughes . . . has been kept in protective custody by the Suffolk County District Attor-

⁴⁶⁸ See Memorandum from Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 31, 1971) (Exhibit 392).

⁴⁶⁹ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 33 (Feb. 13, 2002) (testimony of Marteen Miller).

⁴⁷⁰ Sonoma County Sheriff Police Report on the Murder of Clayton Rickey Wilson (Nov. 21, 1971) (Exhibit 425). Lawrence W. Brown was actually Lawrence Hughes. The information given to Lt. Maybrun was consistent with Lawrence Hughes' testimony in the Clay Wilson murder trial.

⁴⁷¹ *Id.*

⁴⁷² Trial Transcript, *California v. Bentley* (Cal. Super. Ct. Dec. 1, 1971) at 334 (direct examination of Lawrence Hughes) (Exhibit 427).

⁴⁷³ Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI, and Boston FBI Field Office (Dec. 2, 1971) (Exhibit 428). The teletype to Director Hoover noted that both District Attorney Kiernan Hyland and Edward Harrington believed that Hughes had been sent out to California by the Mafia to help get Barboza convicted. *Id.*

⁴⁷⁴ *Id.*

ney's Office as a potential witness for the last two months. Hughes furnished information relative to a meeting in the woods in the Freetown, Massachusetts area between Joseph [Barboza] and Frank Davis, an associate of Raymond L.S. Patriarca, relative to negotiations for a change of testimony on the part of [Barboza] to release the organized crime figures that he had testified against. . . . Hughes will testify to this in a hearing relating to a motion for a new trial which has been filed by six Cosa Nostra members who had previously been convicted for the first-degree murder of Boston gangster Edward Deegan.⁴⁷⁵

With Hughes's information jeopardizing Barboza's fate, the FBI and the Justice Department sought authorization to expand the scope of Condon's testimony. The Justice Department now wanted to disclose Condon's interview with Hughes in September of 1970 in which Hughes allegedly did not mention Barboza's admission of involvement in Wilson's murder.⁴⁷⁶ On December 7, 1971, Attorney General John Mitchell authorized Agent Condon to testify that Hughes did not mention Barboza's involvement with the stolen bonds or the Wilson murder during their interview.⁴⁷⁷ Thus, the same FBI and Justice Department officials who thought Hughes was credible enough to testify about Barboza the previous year to keep the Deegan defendants in jail were now going to question his honesty about Barboza.⁴⁷⁸

On the witness stand, the prosecution asked Special Agent Condon if he had any knowledge about Barboza negotiating with the Mafia to change his testimony.⁴⁷⁹ Condon, who knew about the negotiations from his interview of Lawrence Hughes, responded, "I respectfully decline to answer on instructions from the Attorney General of the United States."⁴⁸⁰ Thus, when the answer would have harmed Barboza, Agent Condon used the limited authority granted by the Attorney General to refuse to answer.

The three federal officials called as witnesses for Barboza—Strike Force Attorney Edward Harrington, FBI Special Agent H. Paul Rico, and FBI Special Agent Dennis Condon—all testified on December 8, 1971. None of them testified to any of the circumstances surrounding the Wilson murder. Essentially, all three testified about the same matters regarding Barboza: he was a government witness who testified against the Mafia, he was placed in protective custody and relocated, and his life was threatened.

⁴⁷⁵ Letter from Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Gerald Shur, Criminal Division, U.S. Dept. of Justice (Nov. 16, 1970) (Exhibit 366).

⁴⁷⁶ Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI, and Boston FBI Field Office (Dec. 2, 1971) (Exhibit 428).

⁴⁷⁷ Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to Dennis Condon, Special Agent, Boston FBI Field Office (Dec. 7, 1971) (Exhibit 437).

⁴⁷⁸ Although Agent Condon did testify at the Barboza trial, he was not asked any questions about Lawrence Hughes. Hughes was able to produce some of the bonds or stock certificates at trial. When Barboza testified at his trial, he admitted that he attempted to sell the stolen bonds in Massachusetts.

⁴⁷⁹ Trial Transcript, *California v. Bentley* (Cal. Super. Ct. Dec. 8, 1971) at 303 (cross-examination of FBI Special Agent Dennis Condon) (Exhibit 439).

⁴⁸⁰ *Id.*

According to Barboza's attorney, Marteen Miller, the federal officials were not called to speak to the Wilson murder.⁴⁸¹ They were called because "[t]he FBI was held in such esteem that if I could call them as a witness and have them say substantially anything, relevant or not, that would be a point in my favor."⁴⁸²

Miller's assertion that basically anything the FBI and a highly placed Justice Department official said would be a point in Barboza's favor was substantiated in testimony before the Committee by Ed Cameron, Investigator for the Sonoma County District Attorney's Office, who worked on the Wilson case:

Mr. CAMERON: Well, our concern was that, we thought we had a pretty good capital murder case. And we didn't have the best witnesses in the world, but we had witnesses, and we had evidence. And we had testimony from people who, and all of that. And we got to the end and we're having FBI agents suddenly appear as almost character witnesses. We had a long talk about what we should do with them as far as attacking them.

And you have to keep in mind, this is in the early 1970's. The FBI, as far as we were concerned, was pretty sacrosanct. And our feeling was that if they really started getting into it and we knew what was going to happen, they were going to say, we can't go into that because of this, that and the other thing. Plus they had damaged our case to the point we didn't think the jury was going to convict on a first degree murder case.⁴⁸³

Miller concurred with Cameron's assessment of the impact of the testimony by the FBI agents and Harrington in favor of Barboza at the Wilson trial:

Rep. LATOURETTE: Mr. Miller, do you have an opinion as to . . . whether or not these agents, Mr. Harrington had an impact on the jury?

Mr. MILLER: No question they had an impact, sir.⁴⁸⁴

Two days following the testimony of the three federal officials for Barboza, the prosecution decided to start discussing a plea agreement with Barboza's attorney.⁴⁸⁵ On December 13, 1971, a plea agreement whereby Barboza pleaded guilty to second-degree murder was entered with the court. Investigator Cameron, Prosecutor Ron Fahey, and Sonoma County District Attorney Kiernan Hyland agreed that the testimony by Harrington, Rico, and Condon had weakened their case to such a point that the prosecution accepted

⁴⁸¹ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 33 (Feb. 13, 2002) (testimony of Marteen Miller).

⁴⁸² *Id.*

⁴⁸³ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 80 (Feb. 13, 2002) (testimony of Ed Cameron).

⁴⁸⁴ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 80 (Feb. 13, 2002) (testimony of Marteen Miller).

⁴⁸⁵ *Id.*

the second-degree murder plea.⁴⁸⁶ On December 14, 1971, Barboza was sentenced to prison for five years.⁴⁸⁷

iv. Joseph Barboza Returns to Prison

Even while Barboza was serving his prison sentence in California, his contacts with Edward Harrington did not end. Almost immediately, Harrington began helping Barboza plot his course for parole. On January 19, 1972, less than one month after Barboza was sentenced, Harrington wrote to the Correctional Counselor at Barboza's prison stating:

It is the United States Government's desire that the State of California place [Barboza] in a constructive correction program designed for his ultimate release as a contributing member of society. . . . The government also requests that [Barboza's] significant contribution to law enforcement in the organized crime field be weighed when his eligibility for parole is considered.⁴⁸⁸

Harrington also informed Barboza that the Justice Department would inform the parole board of Barboza's contribution "to the government's campaign against organized crime."⁴⁸⁹

In the meantime, Barboza kept himself busy in prison by writing a book about his life. Barboza enlisted the aid of Harrington, who told Barboza he would be happy to talk to the author and identify "other individuals who would have background information relating to your career."⁴⁹⁰ In addition, Barboza was invited to appear before the Select Committee on Crime in the U.S. House of Representatives to discuss organized crime where he stated that Frank Sinatra was involved in organized crime.⁴⁹¹ John Partington, the U.S. Marshal who led the detail to guard Barboza for three years, told Committee investigators that he later accused Barboza of lying about Sinatra's alleged involvement with organized crime.⁴⁹²

In September of 1972, Barboza was transferred from California to the Montana State Prison in Deer Lodge, Montana, to protect his life. While there, Barboza became increasingly concerned about parole. Barboza enlisted the help of Harrington to increase his

⁴⁸⁶ "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 80 (Feb. 13, 2002) (testimony of Ed Cameron); Interview with Ron Fahey, former Chief Deputy District Attorney, Sonoma County (July 9, 2001).

⁴⁸⁷ According to interviews with the judge, prosecutors and other witnesses, the five-year sentence appears to have been routine and not influenced by the Justice Department or the FBI. See Interview with Marteen Miller, former Public Defender, Sonoma County, and Bony Saludes, former reporter, *PRESS DEMOCRAT* (July 9, 2001); Interview with Ed Cameron, former Investigator, Sonoma County District Attorney's Office (July 10, 2001); Interview with Ron Fahey, former Chief Deputy District Attorney, Sonoma County, and Gary Bricker, former U.S. Marshal (July 9, 2001); Interview with Judge Joseph P. Murphy, Jr. (Aug. 29, 2001) (Judge Joseph Murphy was the presiding judge for the Wilson murder trial.)

⁴⁸⁸ Letter from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Lois Eggers, Correctional Counselor I, California Medical Facility (Jan. 19, 1972) (Exhibit 456).

⁴⁸⁹ Letter from Edward F. Harrington, Attorney-in-Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Joe Barboza (June 19, 1972) (Exhibit 480).

⁴⁹⁰ Letter from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Joe Barboza (May 17, 1972) (Exhibit 469). Harrington's assistance with Barboza's book earned Harrington the dubious honor of having the book dedicated to him.

⁴⁹¹ "Organized Crime in Sports (Racing), Part 2," *Hearing Before the Select Comm. on Crime*, 92d Cong. 752, 755, 763 (May 24, 1972) (testimony of Joseph Barboza).

⁴⁹² Interview with John Partington, former U.S. Marshal (Sept. 24, 2001).

chances of a favorable decision from the parole board. On June 1, 1973, Harrington wrote the following to the Director of the Parole Board for Montana:

I have been requested by Joseph Bentley, who will appear before the Montana Parole Board on June 26, 1973, to testify as a witness in his behalf.

* * *

[Barboza's] defection from the organized underworld and his decision to become a government witness against his former associates constitutes the single most important factor in the success of the federal government's campaign against organized crime in the New England area. . . . Please advise me if the appearance of witnesses before the Montana Parole Board is in conformity with your practices.⁴⁹³

On July 31, 1973, Barboza received a hearing before the Montana Parole Board. Although the Committee was unable to obtain the hearing records, Barboza revealed part of the proceedings in a letter to Greg Evans, investigator for Barboza's former attorney in California, Marteen Miller:

How can I ever thank you and Marty [Miller] for what you two and Ted H. [Harrington] did for me today. Words can never even begin to express what I feel . . . The parole board said this is the fastest hearing in the History of Montana . . . I didn't even say one word! . . . You, Marty and Ted H. made this all come true. Nobody did I ever owe so much to!⁴⁹⁴

Instead of being paroled, however, Barboza was transferred back to California. Barboza then attempted to contact Harrington, Condon, the Rhode Island Attorney General, and the Superintendent of the Rhode Island State Police to disclose information Barboza claimed he had regarding the murder of Romeo Martin.⁴⁹⁵ However, the reactions to Barboza's offer by Harrington and Gerald McDowell, an attorney in the Boston Office of the Organized Crime Strike Force, show that the government had concerns about any additional information provided by Barboza:

Mr. McDowell and Mr. Harrington had previously advised that [Barboza's] credibility as a witness had been seriously diminished by events that have transpired [sic] in regard to him since his testimony in Federal and State Courts in 1968 and this is also the opinion of authorities in the Organized Crime Section of the Justice Department at Washington, D.C. . . . Boston sees no useful purpose in inter-

⁴⁹³ Letter from Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Robert Miles, Director of the Parole Board, Montana State Prison (June 1, 1973) (Exhibit 566).

⁴⁹⁴ Letter from Joseph Barboza to Greg Evans, Investigator, Sonoma County Public Defender's Office (July 31, 1973) (Exhibit 580).

⁴⁹⁵ Romeo Martin was killed in July of 1966. There are a number of indications that Barboza murdered his old friend. FBI Report by Thomas Sullivan, Special Agent, Boston FBI Field Office (July 18, 1967) (Exhibit 149); VINCENT TERESA, MY LIFE IN THE MAFIA 117 (Doubleday & Company, Inc. 1973).

view of [Barboza] at this time and events referred to by him occurred prior to his testimony in 1968. It is felt that this is another effort on part of [Barboza] to obtain Government support in bid for parole. Strike Force will not consider any future prosecutions based on [Barboza's] testimony.⁴⁹⁶

Although the Justice Department apparently would no longer use Barboza or listen to his information, it was concerned about his welfare. During 1975, media reports stated that the Mafia knew where Barboza was located and that a contract had been put out for his murder. The Justice Department and the FBI were concerned that the effectiveness of the Witness Protection Act would be adversely affected if Barboza were murdered.⁴⁹⁷ Consequently, after serving a mere four years in prison for the Wilson murder, Barboza was “quietly paroled” from the Sierra Conservation Camp in California on October 30, 1975.⁴⁹⁸

On February 11, 1976, Joe Barboza was murdered in San Francisco.⁴⁹⁹ Theodore Sharliss, also known as Jimmy Chalmis, a constant companion of Barboza while they were in prison in California, pleaded guilty in January of 1979 to setting up Barboza's murder.⁵⁰⁰ In 1992, Joseph Russo pleaded guilty to murdering Barboza.⁵⁰¹

2. Nevada

There is substantial evidence that the FBI interfered with the Las Vegas Police investigation of the murder of Peter J. Poulos to protect its informants. In this instance, the FBI sought to protect Top Echelon informant Stephen Flemmi from being prosecuted for the Poulos murder.⁵⁰²

William Bennett, one of the central figures in Boston's gang wars of the 1960's, was fatally shot and thrown from a moving car into a snow bank near Boston on December 23, 1967.⁵⁰³ He was apparently murdered by Stephen Flemmi and Frank Salemme with the assistance of Robert Daddeico and Peter J. Poulos.⁵⁰⁴ A short time thereafter, on January 30, 1968, Flemmi and Salemme planted a bomb in the automobile of Joseph Barboza's attorney, John E. Fitz-

⁴⁹⁶Memorandum from Special Agent in Charge, Boston FBI Field Office, to Clarence Kelley, Director, FBI (Jan. 23, 1974) (Exhibit 594).

⁴⁹⁷See Memorandum from Gerald E. McDowell, Chief Attorney, Organized Crime Strike Force, Boston U.S. Dept. of Justice Field Office, to Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Sept. 17, 1975) (Exhibit 623); Airtel from Special Agent in Charge, Boston FBI Field Office, to Clarence Kelley, Director, FBI (Sept. 19, 1975) (Exhibit 626).

⁴⁹⁸*Former New England Mafia Figure Paroled*, PRESS DEMOCRAT, Nov. 7, 1975 (Exhibit 628).

⁴⁹⁹*Killer Barboza Slain*, BOSTON HERALD, Feb. 12, 1976 (Exhibit 636).

⁵⁰⁰Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI (June 6, 1979) (Exhibit 678).

⁵⁰¹*Nation Briefly*, ORANGE COUNTY REGISTER, Jan. 23, 1992.

⁵⁰²Flemmi began exchanging information with the FBI in the early 1960s, *U.S. v. Salemme*, 91 F. Supp. 2d 141, 176 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000), and was targeted as an informant in November 1964. See Office of Professional Responsibility Summary Report (Exhibit 58). He served as an FBI informant for almost 30 years. *Id.*

⁵⁰³Interview with Robert Daddeico (Oct. 17–18, 2001); Shelley Murphy, *Playing Both Sides Pays Off*, BOSTON HERALD, Apr. 23, 1993.

⁵⁰⁴Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299) (stating that information received from the Boston Police Department indicated that Flemmi and Salemme used Poulos as a “decoy” to get Bennett into a position where he could be killed”); Interview with Robert Daddeico (Oct. 17–18, 2001).

gerald. This resulted in the loss of one of Fitzgerald's legs and part of the other.⁵⁰⁵

In early September 1969, FBI Special Agent H. Paul Rico called Flemmi and warned him that "indictments were coming down" for the William Bennett murder and Fitzgerald bombing.⁵⁰⁶ Agent Rico suggested that Flemmi and "his friend," referring to Salemme, leave town.⁵⁰⁷ Flemmi took Rico's advice and he, Salemme, and Poulos fled together.⁵⁰⁸ A few days later, on September 11, 1969, a Suffolk County indictment was returned against Flemmi, Salemme, and Poulos for the Bennett murder.⁵⁰⁹ A month later, on October 10, 1969, Flemmi and Salemme were indicted for the Fitzgerald bombing.⁵¹⁰

On that same day, October 10, 1969, the body of an unidentified man, later determined to be Peter J. Poulos, was found forty feet south of a desert highway, just outside of Las Vegas in Clark County.⁵¹¹ Employees of the Nevada Highway Department found the body while picking up trash.⁵¹² Clark County Detectives Charles Lee and Jim Duggan were assigned to the investigation but did not know the victim's identity.⁵¹³

Upon arriving at the crime scene, Lee believed that it looked like a "hit."⁵¹⁴ After searching the victim, Detectives Lee and Duggan found no identification.⁵¹⁵ They did, however, find a small loose-leaf notebook in the victim's jacket pocket, which revealed the name Paul J. Andrews and the address of a Los Angeles apartment.⁵¹⁶ After the body was examined at the scene, it was sent to a mortuary in Las Vegas, where an autopsy determined that the cause of death was multiple gunshot wounds.⁵¹⁷

Lee and Duggan then contacted the Los Angeles Police Department and requested a check of the address to ascertain if it was the residence of Paul J. Andrews.⁵¹⁸ Los Angeles detectives confirmed that Paul J. Andrews had, in fact, rented an apartment at

⁵⁰⁵ "Law enforcement officials said Mr. Fitzgerald was targeted for death because he was the lawyer for a famed Cosa Nostra soldier turned-informer, Joseph Barboza Baron." Andy Dabilis & Ralph Ranalli, *Mob Lawyer Maimed in '68 Dies*, BOSTON GLOBE, July 5, 2001.

⁵⁰⁶ *Salemme*, 91 F. Supp. 2d at 182.

⁵⁰⁷ *Id.* According to the *Salemme* court, in warning Flemmi and Salemme about the impending indictments, Rico aided and abetted the unlawful flight of a fugitive, in violation of 18 U.S.C. §§ 2 and 1073. *Id.* The FBI's protection of Stephen "The Rifleman" Flemmi is discussed in Section II.A.8, *supra*.

⁵⁰⁸ *Salemme*, 91 F. Supp. 2d at 182.

⁵⁰⁹ Office of Professional Responsibility Investigative Report (Exhibit 9-11-69) (focusing on allegations of FBI mishandling of confidential informants); DICK LEHR & GERARD O'NEILL, BLACK MASS 12 (Perennial 2001).

⁵¹⁰ *Commonwealth v. Salemme*, 323 N.E.2d 922 (Mass. App. Ct. 1975).

⁵¹¹ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

⁵¹² *Id.*

⁵¹³ Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵¹⁴ *Id.* Lee also indicated that the victim was well dressed and his fingers were well manicured. *Id.*

⁵¹⁵ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵¹⁶ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵¹⁷ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

⁵¹⁸ *Id.*

the address.⁵¹⁹ The detectives also discovered that Andrews had not been at the apartment for some time.⁵²⁰ The Los Angeles Police compared fingerprints found in the apartment to the victim's fingerprints, positively establishing that the victim had been present in Andrews' apartment.⁵²¹ As a result, Detectives Lee and Duggan traveled to Los Angeles to investigate the case further.⁵²² They spoke with the former apartment manager of the apartment where Andrews resided.⁵²³ The manager provided a physical description, which resembled that of Peter Poulos.⁵²⁴ The manager also stated that another man accompanied the victim when he rented the apartment, and she last saw both men on September 27, 1969.⁵²⁵

Detectives Lee and Duggan forwarded the victim's fingerprint cards to the FBI, but the FBI failed to identify the victim.⁵²⁶ To establish the victim's identity, the detectives were forced to go another route. In addition to being well-dressed, the victim had extensive gold dental work.⁵²⁷ Therefore, the Clark County Detectives requested that the victim's teeth be extracted for the purpose of creating a dental mold.⁵²⁸ The detectives then sent the "elaborate photographs" of the dental mold, along with a flier with a description of the victim, to all major police departments throughout the United States.⁵²⁹

The first big break in the case came on January 30, 1970.⁵³⁰ Responding to the flier and photographs sent by Detectives Lee and Duggan, Sergeant Frank Walsh of the Organized Crime Section of the Boston Police Department tentatively identified the murder victim found near Las Vegas on October 10, 1969, as being Peter J.

⁵¹⁹ *Id.*

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵²³ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

⁵²⁴ *Id.*

⁵²⁵ *Id.* As noted in this memorandum, this is the likely date that Poulos left the apartment. First, the apartment manager stated that she saw the man whom she knew to be Paul Andrews and the person accompanying him carrying groceries into the apartment that day. Los Angeles Police found two sacks of unpacked groceries inside the apartment. Second, this date comports with the estimated time of death given by the coroner, who estimated that the death occurred ten to fourteen days prior to the discovery of the body. *See id.* The investigation conducted after the discovery of the body revealed that the death likely occurred on September 29, 1969. *Id.*

⁵²⁶ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299). According to Lee, there was not a nationwide fingerprint database in 1969 like there is today. Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵²⁷ Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵²⁸ *Id.*

⁵²⁹ *Id.*; *see also* Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299) (stating that the fliers were sent out on January 6, 1970).

⁵³⁰ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Clark County Sheriff's Department Follow-Up Police Report ["Follow-Up Report"] (Feb. 9, 1970) (Exhibit 290).

Poulos.⁵³¹ Indeed, Detective Lee said that it was “Frank Walsh [who] broke the case for us. He was a world of information.”⁵³²

On that same day, January 30, 1970, Special Agent McKinnley of the Las Vegas FBI Office notified the Clark County Sheriff Department that his office received information from the Boston FBI Office that the Boston Police Department had established tentative identification of the victim as being Peter Poulos.⁵³³ Agent McKinnley further stated that Poulos was wanted by the Boston Police Department for the murder of William Bennett and was wanted by the FBI for unlawful flight to avoid prosecution in connection with the Bennett murder.⁵³⁴

Three days later, on February 2, 1970, Agent McKinnley provided Clark County Detectives with an apparent FBI wanted poster on Poulos that contained his fingerprints.⁵³⁵ A comparison of the victim’s fingerprints with that of Poulos’ fingerprints positively established the victim as being Peter J. Poulos.⁵³⁶ That same day, the Clark County Detectives talked to Sergeant Walsh on the phone. Sergeant Walsh told the detectives that Stephen Flemmi and Frank Salemme probably murdered Poulos.⁵³⁷

Sergeant Walsh stated that the Boston Police Department wanted Poulos, Flemmi, and Salemme for their role in the William Bennett murder.⁵³⁸ He further stated that Poulos was a loan shark and racketeer in the Boston area and that Flemmi and Salemme were members of the Boston La Cosa Nostra.⁵³⁹ Walsh told the detectives that on the day that Poulos, Flemmi, and Salemme were indicted for the Bennett murder, they all disappeared from the Boston area.⁵⁴⁰ In fact, Sergeant Walsh stated that the Boston Police Department discovered that Poulos, who lived with his mother, received several phone calls on September 11, 1969, asking him to contact a person named “Steve,” presumably Stephen Flemmi.⁵⁴¹ Once Poulos returned home that day, his mother gave him the

⁵³¹Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299). This memorandum states that it was the Las Vegas FBI Office that notified the Clark County Sheriff’s Department that it had received information from the Boston FBI Office that the Boston Police Department had established tentative identification of Poulos. *See also* Follow-Up Report (Exhibit 290); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵³²Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵³³Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

⁵³⁴*Id.*

⁵³⁵*Id.*; Follow-Up Report (Exhibit 290).

⁵³⁶Clark County Sheriff’s Evidence Examined Report (Feb. 2, 1970) (Exhibit 289); Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Follow-Up Report (Exhibit 290).

⁵³⁷Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵³⁸Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

⁵³⁹*Id.* Although both were associated with La Cosa Nostra criminal activity, at the time neither were members of the organization.

⁵⁴⁰*Id.*; Follow-Up Report (Exhibit 290).

⁵⁴¹Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299). *But see* Letter from Frank Walsh, Sergeant Detective, Organized Crime Section, Boston Police Department (Feb. 3, 1970) (Exhibit 291), which states that on a night previous to the return of the true bill “Peter received a telephone call from a person who stated to Mrs. Poulos that it was very important for Peter to get in touch with Steve. This message was given to Peter when he came home on Monday, September 8, 1969, and he stated to her that he was going to Cape Cod for a couple of weeks vacation.”

message. He told his mother that he was going to vacation on Cape Cod for a while.⁵⁴² Poulos then left immediately, taking very few clothes.⁵⁴³

Walsh also told the detectives that additional information received by the Boston Police Department established that Poulos took \$50,000 with him.⁵⁴⁴ Walsh conveyed that local police expected that Poulos would never be seen alive again, because Flemmi and Salemme considered him a “weak link” and would eventually kill him.⁵⁴⁵ Detective Lee told Committee staff that Walsh told him that just before the three fled, Poulos “rolled over as an informant” and was going to incriminate Flemmi and Salemme.⁵⁴⁶ Detective Lee also thinks that Sergeant Walsh mentioned a grand jury. Hence, Flemmi and Salemme were likely tipped off that Poulos was an informant, or was considering becoming an informant or cooperating witness, and that Poulos testified or agreed to testify before a grand jury regarding the Bennett murder or another crime.⁵⁴⁷

Once the identity of the victim was established as Peter J. Poulos, photographs of Flemmi, Salemme, and Poulos were shown to the apartment manager in Los Angeles.⁵⁴⁸ The manager indicated that the photographs of Poulos and Salemme closely resembled Andrews and his associate.⁵⁴⁹ Moreover, information received from Sergeant Walsh indicated that the bullets that killed William Bennett matched the bullets that killed Poulos.⁵⁵⁰

The detectives’ case was coming together. All of the evidence pointed directly at Flemmi and Salemme as Poulos’ murderers.⁵⁵¹ Detectives Lee and Duggan’s police report concluded that Poulos, Flemmi, and Salemme fled Boston together on September 11, 1969, and traveled to Los Angeles, where one of the three rented an apartment using the alias, “Paul J. Andrews.”⁵⁵² On September 27, 1969, the three left the apartment, heading towards Las Vegas. Be-

⁵⁴² Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Letter from Frank Walsh, Sergeant Detective, Organized Crime Section, Boston Police Department (Feb. 3, 1970) (Exhibit 291); Follow-Up Report (Exhibit 290).

⁵⁴³ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299). Four days later, Mrs. Poulos notified the Boston Police that her son’s car was parked outside of her home. See Letter from Frank Walsh, Sergeant Detective, Organized Crime Section, Boston Police Department to Charles Lee, Detective, Office of the Clark County Sheriff (Feb. 3, 1970) (Exhibit 291). Mrs. Poulos stated that someone placed the car in the driveway during the night. *Id.* Human blood was found on the right front bumper of the car. *Id.* This was probably the blood of William Bennett since Poulos’ car was used for the William Bennett murder. Interview with Robert Dadeico (Oct. 17–18, 2001).

⁵⁴⁴ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

⁵⁴⁵ *Id.*

⁵⁴⁶ Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002). Detective Lee also thinks that Sergeant Walsh said something about a grand jury. *Id.* See also John Smith, *Police Frustrated over Federal Protection of Slaying Suspects*, LAS VEGAS REVIEW JOURNAL, Oct. 21, 1998 (Exhibit 281).

⁵⁴⁷ Detective Lee stated that Sergeant Walsh knew that Poulos was an informant, so he postulated that others in the Boston Police Department may have too, which may have led to Flemmi and Salemme being tipped off as to Poulos’ status as an informant. Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002); see also John Smith, *Police Frustrated over Federal Protection of Slaying Suspects*, LAS VEGAS REVIEW JOURNAL, Oct. 21, 1998 (Exhibit 281) (“Someone tipped [Flemmi and Salemme] off and Poulos was silenced.”)

⁵⁴⁸ Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

⁵⁵² *Id.*

fore arriving in Las Vegas, “Flemmi and Salemmé shot and killed victim Peter J. Poulos leaving his body alongside the highway where it was subsequently discovered.”⁵⁵³

With everything ostensibly in order, Clark County District Attorney George Franklin was ready to move forward with the case. He approved a criminal complaint charging Flemmi and Salemmé for the murder of Poulos.⁵⁵⁴ District Attorney Franklin then issued a warrant charging Flemmi and Salemmé for Poulos’ murder.⁵⁵⁵ On March 12, 1970, Judge Roy Woofter signed the arrest warrant.⁵⁵⁶ The investigation then came to an unexpected and sudden halt.⁵⁵⁷

First, Detectives Lee and Duggan asked for routine permission to travel to Boston to interview the key witnesses and suspects.⁵⁵⁸ District Attorney Franklin denied their routine request.⁵⁵⁹ Lee told Committee staff that in all of his years as a homicide detective he “never ran across a case where you could not interview [the] suspects.”⁵⁶⁰ Second, despite getting an arrest warrant signed by Judge Woofter, which Franklin himself issued, Franklin refused to initiate extradition proceedings against Flemmi and Salemmé.⁵⁶¹ Undeterred, Lee then asked Franklin if a fellow detective from Clark County, who was going back East to visit his family, could conduct some interviews and an investigation while he was there.⁵⁶² This request was also denied.⁵⁶³

Lee was perplexed.⁵⁶⁴ He then asked Franklin why his investigation was being blocked and why Franklin suddenly refused to initiate extradition proceedings.⁵⁶⁵ Franklin told Lee that “the FBI stopped the case.”⁵⁶⁶ Lee said that he remembers this encounter vividly, because “it was the only case where he got a murder warrant and it was not pursued.”⁵⁶⁷ Lee remarked, “We got murder warrants on the two, but everything came to a sudden stop.”⁵⁶⁸ Lee further recalls, “They wouldn’t let us go back to interview them. And there was no move to extradite them. I worked a lot of homicides. That’s the only one that ended up like this.”⁵⁶⁹ Lieutenant Tom Monahan told Committee staff that “it is clear the FBI asked the DA to step aside and not do anything.”⁵⁷⁰

In conclusion, the FBI’s interference with Nevada law enforcement’s efforts to prosecute Flemmi and Salemmé for the murder of Poulos inhibited the administration of justice. The reason this murder investigation was unexpectedly halted by the FBI is apparent.

⁵⁵³ *Id.*

⁵⁵⁴ Interview with David Hatch, Detective, Las Vegas Metro Police Dept., Cold Case Review, Homicide Section (Apr. 4, 2002).

⁵⁵⁵ *Id.*

⁵⁵⁶ Clark County Sheriff’s Department Case Cleared Report (Mar. 19, 1970) (Exhibit 300).

⁵⁵⁷ Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.*

⁵⁶² *Id.*

⁵⁶³ *Id.*

⁵⁶⁴ *Id.*

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ John L. Smith, *Police Frustrated over Federal Protection of Slaying Suspects*, LAS VEGAS REVIEW JOURNAL, Oct. 21, 1998 (Exhibit 281).

⁵⁶⁹ *Id.*

⁵⁷⁰ Interview with Tom Monahan, Lieutenant, Las Vegas Metropolitan Police Dept., Homicide Section (Apr. 4, 2002).

In fact, it is the same reason Rico encouraged Flemmi to flee before he was indicted for the William Bennett murder and the Fitzgerald bombing. The FBI was protecting its Top Echelon informant Stephen Flemmi.

3. Oklahoma

In the late 1970s, Oklahoma businessman Roger Wheeler, Sr., purchased World Jai Alai, a company that owned facilities where it was legal to gamble on the handball-like sport.⁵⁷¹ Although rumors of organized crime's involvement in the gaming industry made him hesitate to invest in the company, Wheeler was comforted by the fact that his staff was composed of former FBI agents, including former Special Agent H. Paul Rico, who assured him that his company was "clean."⁵⁷² Wheeler, however, came to suspect the president of World Jai Alai of skimming money from the company for Winter Hill Gang members, including James "Whitey" Bulger and Stephen Flemmi.⁵⁷³ Wheeler fired the World Jai Alai president and began a company-wide audit.⁵⁷⁴ Shortly thereafter, Winter Hill Gang hit men murdered Wheeler at the Southern Hills Country Club in Tulsa, Oklahoma, on May 27, 1981.⁵⁷⁵

Sergeant Michael T. Huff was the first detective to arrive at the scene.⁵⁷⁶ Soon after the murder, the Massachusetts State Police provided Huff with information that Bulger and Flemmi were possibly involved.⁵⁷⁷ Bulger, Flemmi, and John Callahan—the former President of World Jai Alai whom Wheeler fired—allegedly attempted to arrange Wheeler's murder.⁵⁷⁸ They asked Brian Halloran, a Winter Hill Gang member, if he was willing to kill Wheeler.⁵⁷⁹ Several months later, Halloran was facing a state murder charge for a separate incident and offered to cooperate with the FBI.⁵⁸⁰ He told FBI agents about his meeting regarding Wheeler.⁵⁸¹ The agents informed the supervisor of the Organized Crime squad, John Morris, of Halloran's allegations.⁵⁸² Morris told Agent John Connolly, who handled Bulger and Flemmi, of Halloran's cooperation, expecting Connolly to relate the information to his informants.⁵⁸³ Agent Connolly, in turn, informed Bulger and Flemmi of Halloran's cooperation, and Bulger and Flemmi promptly killed Halloran.⁵⁸⁴

Sergeant Huff, and other local officials in Oklahoma and Boston, did not have an opportunity to speak with Halloran before he was

⁵⁷¹ See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 268 (Dec. 5, 2002) (testimony of David Wheeler); *U.S. v. Salemme*, 91 F. Supp. 2d 141, 208 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).

⁵⁷² "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 266, 269 (Dec. 5, 2002) (testimony of David Wheeler).

⁵⁷³ *Salemme*, 91 F. Supp. 2d at 208.

⁵⁷⁴ See *id.* at 209.

⁵⁷⁵ See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 26 (Dec. 5, 2002) (testimony of Michael T. Huff).

⁵⁷⁶ See *id.*

⁵⁷⁷ See *id.* at 27.

⁵⁷⁸ See *Salemme*, 91 F. Supp. 2d at 209.

⁵⁷⁹ See *id.*

⁵⁸⁰ See *id.*

⁵⁸¹ See *id.*

⁵⁸² See *id.*

⁵⁸³ See *id.*

⁵⁸⁴ See *id.* at 209–10.

murdered.⁵⁸⁵ The Miami, Oklahoma City, and Boston FBI offices held a meeting soon after Halloran's murder, but they did not discuss advising the local law enforcement agencies investigating the Wheeler murder of the information Halloran had provided concerning Bulger and Flemmi.⁵⁸⁶ The Boston FBI departed from the Bureau's standard procedures to ensure that the information it had received from Halloran regarding Bulger and Flemmi was virtually inaccessible to anyone who might want to review it.⁵⁸⁷ The Boston FBI also succeeded in keeping local law enforcement officials such as Huff from ever speaking to Bulger and Flemmi.⁵⁸⁸

In July 1982, Huff traveled to Boston to meet with detectives from the Connecticut State Police and Massachusetts State Police.⁵⁸⁹ Huff wanted information on the activities and location of former World Jai Alai President John Callahan.⁵⁹⁰ Before Huff could locate Callahan and question him about the Wheeler murder, Callahan's body was found in the trunk of his car in Miami, Florida.⁵⁹¹

While in Boston, Huff also met with Organized Crime Strike Force Prosecutor Jeremiah O'Sullivan.⁵⁹² At this meeting, Huff was shocked by what he learned.⁵⁹³ Federal authorities knew that Flemmi and Bulger were hit men.⁵⁹⁴ O'Sullivan described former FBI Special Agent H. Paul Rico, then vice-president of World Jai Alai, as a "rogue agent" who caroused with Winter Hill Gang members.⁵⁹⁵ During the meeting, the Massachusetts State Police mentioned that FBI Special Agent John Connolly had real estate transactions with the Winter Hill Gang, but O'Sullivan downplayed these transactions.⁵⁹⁶ Despite all of this information, the FBI's official position was that Rico and Connolly were the "cream of the crop."⁵⁹⁷ Huff also discussed Halloran with O'Sullivan, but O'Sullivan called Halloran a liar and questioned his credibility.⁵⁹⁸ Huff candidly described his meeting with O'Sullivan to the Committee:

Over the past twenty years, there have been many such instances of surprise and disappointment during this investigation. I look back to the July meeting in this very building as an "end of innocence" in my career in law en-

⁵⁸⁵ See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 266 (Dec. 5, 2002) (testimony of Michael T. Huff).

⁵⁸⁶ See *Salemme*, 91 F. Supp. 2d at 210–11.

⁵⁸⁷ See *id.* at 212.

⁵⁸⁸ See *id.* at 208.

⁵⁸⁹ "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 266 (Dec. 5, 2002) (testimony of Michael T. Huff).

⁵⁹⁰ See *id.*

⁵⁹¹ See *Salemme*, 91 F. Supp. 2d at 211.

⁵⁹² See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 277 (Dec. 5, 2002) (testimony of Michael T. Huff).

⁵⁹³ See *id.*

⁵⁹⁴ See *id.*

⁵⁹⁵ See *id.* O'Sullivan testified that he did not recall telling Sergeant Huff that Rico socialized with Winter Hill Gang members. When pressed, O'Sullivan said that it was possible that he told Sergeant Huff this information, but the prosecutor could not specifically recall doing so. See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 266 (Dec. 5, 2002) (testimony of Jeremiah T. O'Sullivan).

⁵⁹⁶ See *id.* at 28.

⁵⁹⁷ See *id.*

⁵⁹⁸ See *id.* at 44.

forcement. I had never been exposed to such a cesspool of dirt and corruption.⁵⁹⁹

This meeting had a deep impact on Huff, and the information provided by O'Sullivan led him to include FBI Special Agents Paul Rico and John Connolly as associates of the Winter Hill Gang when he subsequently drafted a report in August of 1982.⁶⁰⁰

Without cooperation from the FBI, the Wheeler murder investigation sputtered until 1995.⁶⁰¹ In January 1995, the Massachusetts State Police called Huff and informed him that Flemmi, Bulger, and others would soon be prosecuted.⁶⁰² From his experience with the Wheeler investigation, Huff knew that "unimaginable corruption within the FBI" would soon be discovered.⁶⁰³ Despite FBI corruption and lack of cooperation, the Wheeler murder investigation is still active.⁶⁰⁴ In May 2002, John Martorano, the Winter Hill Gang hit man who murdered Wheeler, told a federal jury that former Agent H. Paul Rico furnished information about Wheeler's habits that helped Martorano plan Wheeler's murder.⁶⁰⁵ Rico was the vice president and director of security at World Jai Alai when Wheeler was murdered.⁶⁰⁶ Martorano reportedly testified that he was given "a piece of paper written by Rico with all the information—his phone numbers, addresses."⁶⁰⁷ The Tulsa Police Department continued to investigate Rico as a conspirator in the Wheeler murder.⁶⁰⁸ Following Stephen Flemmi's acceptance of a plea agreement on federal charges, Rico was finally arrested in connection with the Wheeler murder.⁶⁰⁹

While the Wheeler investigation and now prosecution continues, Roger Wheeler's son David poignantly reminded:

Forgotten in all of this are the people the Agency is sworn to serve, the people it was designed to protect: People like my father. People like all of the others murdered by this Agency's informants, whose families—some of them present today, in this room—grieve to this day.

Something else has been lost, too, perhaps forever, as a result of these disclosures of FBI abuse: Trust and confidence. The trust of people who, like my father, believed the FBI served a good and honorable purpose. People who would like to trust the Bureau, but now, sadly, do not.

⁵⁹⁹ *Id.* at 28.

⁶⁰⁰ *See id.*

⁶⁰¹ *See id.* at 29.

⁶⁰² *See id.*

⁶⁰³ *See id.*

⁶⁰⁴ *See id.* at 29–30.

⁶⁰⁵ *See* J.M. Lawrence, *Oh, Brother; Hit Man Says Bulger Asked Agent to Watch over Whitey*, BOSTON HERALD, May 14, 2002, at 1.

⁶⁰⁶ *See* "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 269 (Dec. 5, 2002) (testimony of Michael T. Huff); Edmund H. Mahony, *Detective: Jai Alai Slaying Investigation Still Active*, HARTFORD COURANT, Dec. 6, 2002, at A14.

⁶⁰⁷ *See* Edmund H. Mahony, *Detective: Jai Alai Slaying Investigation Still Active*, HARTFORD COURANT, Dec. 6, 2002, at A14.

⁶⁰⁸ *See* "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 272 (Dec. 5, 2002) (testimony of Michael T. Huff); Edmund H. Mahony, *Detective: Jai Alai Slaying Investigation Still Active*, HARTFORD COURANT, Dec. 6, 2002, at A14.

⁶⁰⁹ Ralph Ranalli, *Break Seen In Fight on Corruption*, BOSTON GLOBE, Oct. 10, 2003.

Where there was once trust, there is now fear. And that is a loss we cannot afford.⁶¹⁰

David Wheeler's story is not unique; FBI informants destroyed the lives of many other families.

4. Florida

There is substantial evidence that state and local law enforcement efforts in Florida were obstructed by the FBI during a Miami homicide investigation. On August 4, 1982, John Callahan's body was found in the trunk of his car at the Miami Airport.⁶¹¹ Shelton Merritt, lead investigator in the homicide investigation, told Committee investigators that he had received information that there might be a Boston connection to the Callahan murder. Consequently, he and Sergeant Mike Hammerschmidt traveled to Boston shortly after Callahan's body was discovered to pursue various leads.⁶¹² Merritt and Hammerschmidt met with Special Agent Gerald Montanari in the Boston FBI Office and indicated they wanted to interview witnesses about the Callahan murder.⁶¹³ Montanari said "let's walk outside," and, when they were outside, he told the Florida police officers that that they could not talk in the office.⁶¹⁴ Montanari said the FBI was interviewing the witnesses and that Merritt and Hammerschmidt could not.⁶¹⁵ Montanari told Merritt and Hammerschmidt that Callahan had been planning to provide the FBI with information but was killed before doing so.⁶¹⁶ Merritt went back to Miami, aware that he was dealing with organized crime.⁶¹⁷

From the outset of the investigation, the FBI had access to the Florida homicide unit's investigative findings.⁶¹⁸ H. Paul Rico, a former FBI Special Agent and the Security Director of World Jai Alai, soon became aware of every move Merritt and the other investigators made.⁶¹⁹ Florida homicide investigators became uncomfortable with this arrangement. As a result, FBI agents were not allowed to look at reports or even to go on the homicide floor without supervision.⁶²⁰

Upon returning to Florida, Merritt began working with the Florida Department of Law Enforcement ("FDLE"), which was conducting an investigation of corruption in the gaming industry.⁶²¹ Merritt and the FDLE began working with IRS auditors in an attempt to understand the alleged motive for the Callahan murder.⁶²² Lewis Wilson, an FDLE Special Agent, was involved in the inves-

⁶¹⁰ See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107th Cong. 270 (Dec. 5, 2002) (testimony of David Wheeler).

⁶¹¹ *U.S. v. Salemmme*, 91 F. Supp. 2d 141, 211 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).

⁶¹² Telephone interview with Shelton Merritt, former Detective, Metro Dade Police Dept. (Dec. 2, 2002).

⁶¹³ *Id.*

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

⁶¹⁶ *Id.*

⁶¹⁷ *Id.*

⁶¹⁸ *Id.*

⁶¹⁹ *Id.*

⁶²⁰ *Id.*

⁶²¹ *Id.*

⁶²² *Id.*

tigation.⁶²³ At the time, Wilson was aware that Rico employed the wife of one FBI Special Agent at World Jai Alai.⁶²⁴ Documents obtained by the Committee also show that the previous year Rico had entertained FBI Special Agents Tom Dowd, whose wife worked for Rico, and Jerry Forrester in the Bahamas and that this business relationship was paid for by World Jai Alai.⁶²⁵ Wilson has had a persistent feeling for the last twenty years that “things didn’t feel right” with the FBI.⁶²⁶ According to Wilson, “this case has haunted [him] for the last twenty years.”⁶²⁷

The Callahan murder investigation and the related investigation of corruption in the jai alai business gradually fizzled out.⁶²⁸ According to Merritt, he was “stonewalled and snowballed” by the FBI and “the FBI gave them the cold shoulder.”⁶²⁹

5. Massachusetts

This section makes no attempt to provide a complete accounting of the problems experienced by state investigators. Although there may be many more, this section discusses four investigations that appear to have been compromised in an effort to protect Stephen Flemmi and James Bulger.

i. Operation Lobster

FBI personnel appear to have compromised a number of state investigations in Massachusetts. In 1977, the Boston FBI and the Massachusetts State Police initiated Operation Lobster, a joint probe of the widespread hijacking of trucks in New England.⁶³⁰ The lead state police representative, Bob Long, recalled that there was no cooperation from the FBI on the operation.⁶³¹ Operation Lobster intended to target James “Whitey” Bulger, Stephen Flemmi, and other members of the Winter Hill Gang.⁶³² FBI Agent Nick Gianturco went undercover, posing as a fence for the truck hijackers.⁶³³ The investigation continued into 1978 when, in an off-hand remark, Bulger told FBI Agent John Connolly that some of his associates were considering robbing a fence (Gianturco) in Boston.⁶³⁴ Connolly was concerned for Gianturco’s safety, called the undercover agent, and warned him that the hijackers were going to kill him.⁶³⁵ Sergeant Bob Long, however, said there was never any evidence that Gianturco’s life was in danger.⁶³⁶ Agent Connolly

⁶²³ Telephone interview with Lewis Wilson, former Special Agent, Florida Department of Law Enforcement (Dec. 2, 2002).

⁶²⁴ *Id.*

⁶²⁵ World Jai Alai Purchase Report (May 11, 1981) (Exhibit 719).

⁶²⁶ Telephone interview with Lewis Wilson, former Special Agent, Florida Department of Law Enforcement (Dec. 2, 2002).

⁶²⁷ *Id.*

⁶²⁸ Telephone interview with Shelton Merritt, former Detective, Metro Dade Police Dept. (Dec. 2, 2002).

⁶²⁹ *Id.*

⁶³⁰ See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

⁶³¹ *Id.*

⁶³² *Id.*

⁶³³ See *United States v. Salemme*, 91 F. Supp. 2d 141, 197 (D. Mass. 1999), *rev’d in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).

⁶³⁴ See DICK LEHR & GERARD O’NEILL, BLACK MASS 61 (Perennial 2000).

⁶³⁵ See *id.* Flemmi contradicted Connolly’s account, saying that Connolly was informed of a possible shakedown of Gianturco, not a planned murder. Connolly would later claim that Bulger helped save an FBI agent’s life as a justification for leaving Bulger open as an informant. See *id.* at 130; *Salemme*, 91 F. Supp. 2d at 197.

⁶³⁶ See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

did not notify the FBI and state police officials responsible for Gianturco's safety or Bulger's remark, nor did he document the episode in an FBI report until two years later.⁶³⁷ After Connolly warned Gianturco of the possible threat on his life, Operation Lobster was quickly concluded with the arrest of 46 people from every organized crime faction in the city except Bulger's and Flemmi's South Boston.⁶³⁸

ii. The Lancaster Street Garage

In 1980, the Massachusetts State Police determined that the Lancaster Street Garage ("Garage") in downtown Boston was a hub for organized crime figures conducting illegal activities.⁶³⁹ From an apartment across Lancaster Street, the state police saw virtually every organized crime figure in New England visit James "Whitey" Bulger and Stephen Flemmi at the Garage.⁶⁴⁰ After watching the Garage for eleven weeks, the police consulted Jeremiah O'Sullivan, the top federal prosecutor for the New England Organized Crime Strike Force, about obtaining authority for microphone surveillance.⁶⁴¹ The Massachusetts State Police insisted that the FBI not be told about the microphone because state officials believed that Bulger and Flemmi were FBI informants who might compromise the investigation if they knew about the bug.⁶⁴² Considering the request to conduct the investigation without the FBI, O'Sullivan recommended that the state police work with the Suffolk County District Attorney's Office.⁶⁴³ With the local prosecutor's assistance, the state police obtained a warrant to bug the Lancaster Street Garage.⁶⁴⁴ On July 24, 1980, the state police successfully installed a microphone in the Garage.⁶⁴⁵

For about two weeks, the Lancaster Street bug was "extremely productive."⁶⁴⁶ Bob Long, a Sergeant for the Massachusetts State Police, said that they initially picked up transmissions of Bulger and Flemmi meeting in the Garage's office.⁶⁴⁷ However, within a few weeks Bulger and Flemmi abruptly changed their routine and no longer discussed business in the office.⁶⁴⁸ Instead, Bulger and Flemmi joked about what great guys the state police were, and the two informants eventually stopped using the Garage altogether.⁶⁴⁹ The state police knew that Bulger and Flemmi had been tipped off concerning the electronic surveillance.⁶⁵⁰ According to Judge Mark

⁶³⁷ See DICK LEHR & GERARD O'NEILL, BLACK MASS 61, 130 (Perennial 2000). The authors of *Black Mass* concluded that Flemmi—not Bulger—informed Connolly of the plan to rob the fence. Compare *id.* with *Salemme*, 91 F. Supp. 2d at 197.

⁶³⁸ See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).
⁶³⁹ See *Salemme*, 91 F. Supp. 2d at 202.

⁶⁴⁰ See *id.*; DICK LEHR & GERARD O'NEILL, BLACK MASS 85 (Perennial 2000).

⁶⁴¹ See *Salemme*, 91 F. Supp. 2d at 202; DICK LEHR & GERARD O'NEILL, BLACK MASS 84–85 (Perennial 2000).

⁶⁴² See *Salemme*, 91 F. Supp. 2d at 202; Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

⁶⁴³ Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001). Concerning the exclusion of the FBI from Long's investigation, O'Sullivan also advised Long that it would be suicide for him to go against the FBI. See *id.*

⁶⁴⁴ See *Salemme*, 91 F. Supp. at 202; DICK LEHR & GERARD O'NEILL, BLACK MASS 85 (Perennial 2000).

⁶⁴⁵ See *Salemme*, 91 F. Supp. at 202.

⁶⁴⁶ See *id.*

⁶⁴⁷ Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

⁶⁴⁸ See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001); DICK LEHR & GERARD O'NEILL, BLACK MASS 85 (Perennial 2000).

⁶⁴⁹ Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

⁶⁵⁰ See *Salemme*, 91 F. Supp. 2d at 202.

Wolf, Flemmi originally learned of the bug from a Massachusetts State Police Trooper.⁶⁵¹ Flemmi then discussed this matter with Agent John Connolly, who was able to confirm for Flemmi and Bulger that the Lancaster Street Garage was bugged.⁶⁵² Flemmi and Bulger conveyed the information to their organized crime associates, and discussion of criminal activity at the Garage stopped.⁶⁵³ The Lancaster Street Garage investigation was a failure.

iii. The Howard Johnson's Investigation

A few weeks after the Lancaster Street Garage investigation was compromised, the Massachusetts State Police began a new investigation of Bulger and Flemmi.⁶⁵⁴ The state police determined that Bulger and Flemmi were using a bank of pay phones at a Howard Johnson's restaurant in Boston to conduct business.⁶⁵⁵ State troopers believed that Bulger and Flemmi were involved in drug trafficking after they were seen meeting with Frank Lepere, a marijuana dealer, who had visited the Lancaster Street Garage.⁶⁵⁶ The following day, September 5, 1980, Bulger and Flemmi met at Howard Johnson's with Mickey Caruna, reputedly the biggest drug trafficker in New England.⁶⁵⁷ Based on this information, the state police obtained a second warrant to conduct electronic surveillance of Bulger and Flemmi.⁶⁵⁸ On September 17, 1980, the five pay phones outside the Howard Johnson's were tapped.⁶⁵⁹ The state troopers awaited the targets' arrival, but Bulger and Flemmi never used the Howard Johnson's for business again.⁶⁶⁰

iv. The DEA Investigation

Several years later, in 1984, the DEA initiated an investigation targeting Bulger and Flemmi.⁶⁶¹ DEA officials understood that any effort to obtain a court order to conduct electronic surveillance of Bulger and Flemmi would have to include a law enforcement agency with the authority to investigate non-narcotics offenses because the DEA expected to overhear evidence of loansharking, gambling, and extortion.⁶⁶² The DEA preferred not to collaborate with the FBI, which had the authority to investigate these offenses, because DEA agents believed that Bulger and Flemmi were FBI informants.⁶⁶³ Thus, the DEA recruited the Massachusetts State Police, instead of the FBI, to assist with the investigation.⁶⁶⁴ Despite efforts to keep the joint investigation secret, Special Agent Connolly learned of the investigation and advised his informants of the pos-

⁶⁵¹ See *id.*

⁶⁵² See *id.*

⁶⁵³ See *id.*

⁶⁵⁴ See DICK LEHR & GERARD O'NEILL, BLACK MASS 90 (Perennial 2000).

⁶⁵⁵ See *id.* at 90–91; Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

⁶⁵⁶ See DICK LEHR & GERARD O'NEILL, BLACK MASS 91 (Perennial 2000).

⁶⁵⁷ See *id.*

⁶⁵⁸ See *id.*

⁶⁵⁹ See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001); DICK LEHR & GERARD O'NEILL, BLACK MASS 91 (Perennial 2000).

⁶⁶⁰ See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001); DICK LEHR & GERARD O'NEILL, BLACK MASS 91 (Perennial 2000).

⁶⁶¹ *Salemme*, 91 F. Supp. 2d at 220.

⁶⁶² *Id.* at 223.

⁶⁶³ See *id.* at 220, 223.

⁶⁶⁴ See *id.* at 223.

sibility of electronic surveillance.⁶⁶⁵ The DEA and U.S. Attorney's Office soon realized that Bulger and Flemmi were aware that they had been targeted, but decided to continue the investigation.⁶⁶⁶ Federal authorities wanted to convey the impression to Bulger and Flemmi that the investigation had been concluded.⁶⁶⁷ In an effort to reduce the number of people who knew about the investigation and minimize the risk of leaks, the DEA cut the Massachusetts State Police out of the investigation on the pretext that it was being abandoned. Thus, the DEA lost the partner in the joint investigation with the authority and experience to investigate gambling and loansharking.⁶⁶⁸ The DEA investigation was ultimately unsuccessful, and, due to Agent Connolly's leak, the Massachusetts State Police's role in another Bulger and Flemmi investigation had been compromised.⁶⁶⁹

6. Connecticut

Connecticut state law enforcement also encountered interference with important investigations, particularly in regard to its scrutiny of organized crime involvement in the sport of jai alai.⁶⁷⁰ "Investigators from agencies for various states, in particular state police detectives from Connecticut, have long complained that FBI agents in Boston impeded jai alai investigations in an effort to protect two bureau informants."⁶⁷¹ According to Austin McGuigan, former chief prosecutor of the Connecticut Statewide Organized Crime Task Force, "Federal agents were all too willing to provide information regarding state and local investigations to former FBI agents who were employed by the very businesses that were under investigation . . . [, but] the same information was not provided to the agencies mandated by law to prosecute these cases."⁶⁷²

The Connecticut legislature legalized jai alai gambling in April 1972.⁶⁷³ This authorization led to several state law enforcement jai alai investigations concerning game fixing and connections to organized crime. "Before the first [Connecticut] fronton⁶⁷⁴ opened in 1976, allegations surfaced that mob-connected businessmen from Florida were trying to expedite the Connecticut licensing process with a substantial cash payment."⁶⁷⁵ As a result, the Connecticut Statewide Organized Crime Task Force, with Austin McGuigan as its chief prosecutor, began an investigation in the fall of 1975 into the opening of a Bridgeport Jai Alai fronton.⁶⁷⁶ During the inves-

⁶⁶⁵ See *id.* at 227–28.

⁶⁶⁶ See *id.* at 230.

⁶⁶⁷ See *id.*

⁶⁶⁸ See *id.*

⁶⁶⁹ See *id.* at 242.

⁶⁷⁰ Jai alai is a court game similar to handball in which players use a long hand-shaped basket strapped to the wrist to catch and propel the ball.

⁶⁷¹ Edmund Mahony, *Sources: Gangster Admits to Jai Alai Killing*, HARTFORD COURANT, July 23, 1998, at A1.

⁶⁷² "Justice Department Misconduct in Boston: Are Legislative Solutions Required?," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 681 (Feb. 27, 2002) (testimony of Austin McGuigan).

⁶⁷³ Lyn Bixby, *25 Years of Gambling in Connecticut; A Quarter-Century of Gambling, Hidden Costs*, HARTFORD COURANT, Feb. 24, 1997, at A1.

⁶⁷⁴ A fronton is a building in which jai alai is played.

⁶⁷⁵ Edmund Mahony & Lyn Bixby, *Did the FBI Hinder the Investigation into the 1980s Jai Alai Killings? A Tale of Murder and Frustration*, HARTFORD COURANT, Nov. 9, 1997, at A1.

⁶⁷⁶ "Justice Department Misconduct in Boston: Are Legislative Solutions Required?," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 675 (Feb. 27, 2002) (testimony of Austin McGuigan).

tigation, the task force discovered meetings between major New York and New Jersey La Cosa Nostra figures and the President of Bridgeport Jai Alai and determined that a loan from the Central State Teamsters Fund had funded the fronton.⁶⁷⁷ The task force revoked Bridgeport Jai Alai's license because of its connection to organized crime but did not have jurisdiction to conduct a thorough investigation because certain meetings were occurring in New Jersey and New York and the loans were originating in Chicago.⁶⁷⁸ Consequently, the task force attempted to turn over the information it had uncovered to federal law enforcement.⁶⁷⁹ However, according to McGuigan, "they displayed a singular lack of interest in pursuing the case and, to say the least, were uncooperative."⁶⁸⁰

Chief Prosecutor McGuigan and the task force then began a licensing investigation into World Jai Alai, which was planning to open a fronton in Hartford.⁶⁸¹ Members of the task force had previously met a number of ex-FBI agents engaged as security specialists at World Jai Alai, including H. Paul Rico, the head of security who had formerly worked as a Special Agent in the Boston FBI Office.⁶⁸² As a Justice Department employee, Rico specialized in organized crime investigations and the development of confidential informants. The task force requested information about World Jai Alai President John Callahan from federal law enforcement agencies but received no information of consequence.⁶⁸³ McGuigan later discovered that the federal government was aware, in January 1976, of allegations that Callahan was involved in loan sharking with Boston's Winter Hill Gang.⁶⁸⁴ This information was shared with former FBI Special Agent Paul Rico while the task force's request for information from federal officials was met with silence.⁶⁸⁵

Although federal law enforcement had not provided information about Callahan sufficient to raise concerns, Connecticut investigators were suspicious of his activities and connections. As a result, task force investigators decided to follow Callahan when he left a meeting in Hartford.⁶⁸⁶ Callahan had told the task force that he was going directly to Miami after meeting with the task force. McGuigan, however, followed Callahan, who went to Boston instead of Miami.⁶⁸⁷ McGuigan mentioned Callahan's name to Chief Prosecutor Tom Dwyer of the Suffolk County Organized Crime Prosecution Unit, and was told that Callahan had "organized crime connections, Winter Hill Gang."⁶⁸⁸ Dwyer further told McGuigan that his unit had done surveillance on Callahan and that Callahan "had meetings with the Winter Hill Gang, John Martorano, the Flemmis, Howie Winter, and so forth."⁶⁸⁹ McGuigan was puzzled

⁶⁷⁷ *Id.*

⁶⁷⁸ *Id.* at 675, 682.

⁶⁷⁹ *Id.* at 675.

⁶⁸⁰ *Id.* at 676, 682.

⁶⁸¹ *Id.*

⁶⁸² *Id.*

⁶⁸³ *Id.*

⁶⁸⁴ *Id.* at 677, 683.

⁶⁸⁵ *Id.*

⁶⁸⁶ *Id.* at 676, 682.

⁶⁸⁷ *Id.*

⁶⁸⁸ *Id.*

⁶⁸⁹ *Id.*

as to how this information was not known to the former FBI agents working in security at World Jai Alai.⁶⁹⁰

The Connecticut task force scheduled a hearing to obtain testimony from Callahan on May 3, 1976.⁶⁹¹ However, Jai Alai Security Director Rico learned of the investigation shortly before the hearing, and Callahan resigned before the task force could secure his testimony. This removed Callahan from the task force's jurisdiction, since he was no longer tied to Connecticut.⁶⁹²

World Jai Alai opened its Hartford fronton after Callahan's resignation.⁶⁹³ Following its opening, the Connecticut task force obtained the first convictions for the fixing of Jai Alai games.⁶⁹⁴ The task force's jurisdiction was limited to the State of Connecticut's borders, however, and McGuigan was not aware of a federal agency ever conducting any interstate jai alai investigation.⁶⁹⁵

Roger Wheeler, an Oklahoma businessman, purchased World Jai Alai in 1978. In 1981, however, Wheeler was murdered at the Southern Hills Country Club in Tulsa, Oklahoma.⁶⁹⁶ The Connecticut task force opened an investigation to determine whether a link existed between the jai alai skimming allegations, the Winter Hill Gang, and the Wheeler murder.⁶⁹⁷ McGuigan and his task force contacted the Dade County Strike Force to interview Callahan.⁶⁹⁸ However, the day McGuigan arrived in Miami for the interview, Callahan's body was discovered in the trunk of a car parked at the Miami Airport.⁶⁹⁹

The FBI's treatment of the Connecticut task force during the jai alai investigations provides yet another example of a major failure to cooperate with state law enforcement. Because of the FBI's failure to provide information to the task force, Connecticut law enforcement was impeded in its efforts to investigate and prosecute wrongdoing in the jai alai industry.

7. Rhode Island

Joseph Barboza was not the only cooperating witness developed by FBI Special Agent H. Paul Rico. Not long after Barboza testified in the Deegan murder prosecution, Rico developed and handled Rhode Island state witness John J. "Red" Kelley in connection with the prosecution of mob boss Raymond Patriarca and four of his associates. In doing so, Rico interfered with state law enforcement. Specifically, the Rhode Island Supreme Court found that Kelley was directed by Rico to commit perjury to protect an informant, to protect and further an ongoing FBI investigation, and to ensure the conviction of the defendants at trial.⁷⁰⁰ The court also found that Rico lied under oath to corroborate portions of Kelley's perjury.⁷⁰¹

⁶⁹⁰ *Id.*

⁶⁹¹ *Id.*

⁶⁹² *Id.* at 676–77.

⁶⁹³ *Id.* at 677, 683.

⁶⁹⁴ *Id.*

⁶⁹⁵ *Id.*

⁶⁹⁶ *Id.* at 677.

⁶⁹⁷ *Id.* at 677–78.

⁶⁹⁸ *Id.*

⁶⁹⁹ *Id.*

⁷⁰⁰ See *State v. Patriarca*, 308 A.2d 300, 305 (R.I. 1973).

⁷⁰¹ See *id.*

On April 20, 1968, Rudolph Marfeo and his associate Anthony Melei were shot to death while shopping at a market in Providence, Rhode Island.⁷⁰² These gangland slayings, committed at the behest of Raymond Patriarca, were the culmination of a conspiracy to eliminate Marfeo's involvement in a gambling operation.⁷⁰³ Seven men were charged with murder, conspiracy to murder, and accessory before the fact to murder.⁷⁰⁴ An eighth participant in the murders was John J. "Red" Kelley. However, instead of being charged and standing trial for his role in the murders, Kelley became a government witness.⁷⁰⁵

Patriarca was considered one of the nation's top organized crime leaders, and his conviction would have dealt a severe blow to organized crime in New England.⁷⁰⁶ In fact, a Department of Justice memorandum recommending Patriarca's prosecution stated: "[I]t was generally agreed among the FBI, Strike Force Attorneys, and the Rhode Island Attorney General that [the] conviction of Patriarca . . . in this matter would deal a death blow to the Rhode Island LCN" ["La Cosa Nostra"] and "the conviction of Maurice R. 'Pro' Lerner will remove from the scene one of the most vicious and affective [sic] killers in New England."⁷⁰⁷

Not long after the Marfeo-Melei murders, Special Agent Rico developed John "Red" Kelley as a cooperating witness.⁷⁰⁸ In the process, Rico met with Kelley on several occasions to prepare for the Rhode Island prosecution of the murders of Marfeo and Melei.⁷⁰⁹ By the time Kelley was turned over to Assistant Rhode Island Attorney General Richard Israel, Kelley was a fully prepared witness.⁷¹⁰ In an interview with the Committee, Israel remarked that he "had no reason to question the FBI" regarding the scope of the promises, rewards, or inducements Kelly was going to receive to

⁷⁰² See *id.*

⁷⁰³ See *id.*

⁷⁰⁴ The seven who were indicted, and the crimes with which they were charged, were as follows: Robert Fairbrothers, Maurice Lerner, and John Rossi were charged with murder and conspiracy. Patriarca, Louis Manocchio, Rudolph Sciarra, and Frank Vendituoli were charged with accessory to murder and conspiracy. The conspiracy charge against Vendituoli was dismissed, and he was found not guilty of the accessory charges. See *Patriarca*, 308 A.2d at 395; *State v. Manocchio*, 496 A.2d 931 (R.I. 1985).

⁷⁰⁵ See *Patriarca*, 308 A.2d at 305–07 (providing a detailed factual account of the murders).

⁷⁰⁶ See Letter from Robert F. Kennedy, Attorney General, U.S. Dept. of Justice, to the Honorable Mortimer M. Caplan, Commissioner, IRS (Feb. 13, 1961) (Exhibit 16) (Kennedy lists Raymond Patriarca as one of the 39 top echelon racketeers in the country targeted for investigation and prosecution.)

⁷⁰⁷ Memorandum from Gerald McDowell, Attorney, Organized Crime Strike Force, Boston U.S. Dept. of Justice Field Office, to Thomas Kennelly, Deputy Chief, Organized Crime and Racketeering Section, U.S. Dept. of Justice (Aug. 11, 1969) (document is retained by the Justice Department). A senior FBI official later called the convictions "an achievement of major dimension causing telling disruption at organized crime's top-level in New England." FBI Memorandum from J.H. Gale to Mr. DeLoach (Mar. 31, 1970) (Exhibit 308).

⁷⁰⁸ See FBI Memorandum from J.H. Gale to Mr. DeLoach (Mar. 31, 1970) (Exhibit 308). ("Rico was instrumental in the development and handling of notorious Boston hoodlum John Kelley as an informant and witness.") Rico also likely believed that Kelley's testimony would solidify the veracity of Barboza's previous testimony against Patriarca for the conspiracy to murder Rudolph Marfeo's brother Willie, which would further demonstrate Barboza's importance as a witness.

⁷⁰⁹ Trial Transcript, *State v. Lerner* (R.I. Super. Ct.) at 2571, 2610, 2622, 2623 ["Lerner Trial Transcript"] (Exhibit 302).

⁷¹⁰ See Lerner Trial Transcript at 2550, 2555, 2557–2567, 2571, 2610, 2622–23 (Exhibit 302). Israel told the Committee that he never interviewed Kelley without Rico being present. Israel noted that the FBI was particularly esteemed at the time and Rico's constant presence never struck him as suspicious. Interview with Richard Israel, former Assistant Attorney General, Rhode Island (Sept. 26, 2001).

testify at the Marfeo/Melei murder trial.⁷¹¹ Israel continued saying, “[T]hey [we]re handing me a major crime on a silver platter—hell a gold platter and we were going to break down the major element of Patriarca’s unit.”⁷¹²

The trial began for Maurice Lerner, Raymond Patriarca, Robert Fairbrothers, John Rossi, and Rudolpho Sciarra on February 27, 1970 (the “Lerner trial”).⁷¹³ Luigi Manocchio, who had also been indicted, earlier fled the jurisdiction and evaded arraignment and prosecution until May of 1983.⁷¹⁴ On March 9, 1970, Kelley took the stand at the Lerner trial as the state’s main witness.⁷¹⁵ Kelley testified as to the planning and execution of the murders, including his own role, and as to the promises, rewards, and inducements he was receiving in exchange for his testimony.⁷¹⁶ Rico also took the stand to corroborate Kelley’s testimony as to the promises, rewards, or inducements Kelley was receiving for testifying.⁷¹⁷ As a result, Lerner was convicted of murder and conspiracy to murder.⁷¹⁸ The other defendants were convicted of conspiring to murder.⁷¹⁹

It was not until 1983 that it was publicly revealed that Kelley and Rico testified falsely at the Lerner trial. In preparing for the trial of Manocchio for his role in the Marfeo/Melei murders, Assistant Attorney General for the State of Rhode Island David Leach looked at the Lerner trial transcript as a “script” for the Manocchio trial.⁷²⁰ Knowing that Kelley would have to be called as the state’s main witness,⁷²¹ Leach and Rhode Island Detective Urbano Prignano met with Kelley before he was called as a witness.⁷²² At that time, Kelley relayed to them that certain portions of his prior testimony at the Lerner trial were false and that Special Agent Rico had instructed him to commit perjury. When asked why he went along with Rico’s suggestions, Kelley responded, “Well, my life was in their hands.”⁷²³

At the Manocchio trial, Kelley testified that he had committed perjury during the Lerner trial in three aspects, all at the behest

⁷¹¹ Interview with Richard Israel, former Assistant Attorney General, Rhode Island (Sept. 26, 2001).

⁷¹² *Id.*

⁷¹³ Docket Sheet, *State v. Lerner* (R.I. Super. Ct.) [“Lerner Docket Sheet”] (Exhibit 294). Kelley was granted immunity in exchange for his testimony. Order, *In re: Application of Attorney General under Chapter 54 of the Public Laws of 1969* (Exhibit 277).

⁷¹⁴ *Manocchio*, 496 A.2d at 931.

⁷¹⁵ See Lerner Trial Transcript at 1994 (Exhibit 296).

⁷¹⁶ Lerner Trial Transcript at 1994–2448 (Exhibit 296); see also *Patriarca*, 308 A.2d at 305–07; *Lerner v. Moran*, 542 A.2d 1089, 1090–91 (R.I. 1988).

⁷¹⁷ Lerner Trial Transcript at 2613–16, 2621–22, 2630–31, 2636 (Exhibit 302); See also *Moran*, 542 A.2d at 1090–91.

⁷¹⁸ Lerner Docket Sheet (Exhibit 306); see also *State v. Lerner*, 308 A.2d 324, 330 (R.I. 1973). Lerner was later sentenced on September 14, 1970, to consecutive life sentences on the murder charges and ten years on the conspiracy charge. See Application for Post-Conviction Relief (Exhibit 771). Patriarca was sentenced to a term of 10 years imprisonment for conspiracy to murder.

⁷¹⁹ Lerner Docket Sheet (Exhibit 306); see also *Lerner*, 308 A.2d at 330. Rico was praised for his “outstanding accomplishments in the development and handling” of Kelley and received an incentive award approved by Director Hoover. See FBI Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 30, 1970) (Exhibit 307); FBI Memorandum from J.H. Gale to Cartha DeLoach (Mar. 31, 1970) (Exhibit 308); Letter from J. Edgar Hoover, Director, FBI, to H. Paul Rico, Special Agent, Boston FBI Field Office (Apr. 1, 1970) (Exhibit 310).

⁷²⁰ Interview with David Leach, former Assistant Attorney General for Rhode Island (Sept. 25, 2001).

⁷²¹ *Id.*

⁷²² See Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 762).

⁷²³ Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

of Rico. First, Kelley testified at the Lerner trial that he cut down a shotgun for use in the murders.⁷²⁴ However, at the Manocchio trial, Kelley admitted that his armorer actually “cut down” the weapon.⁷²⁵ Kelley said Rico told him not to mention the armorer’s role in the murders because the armorer was an important FBI informant who Rico wanted to keep on the streets in an effort to dismantle the Boston group of the Patriarca crime family.⁷²⁶

Second, Kelley testified at the Lerner trial that the gang had a key meeting with Patriarca prior to the murders at a particular restaurant.⁷²⁷ However, at the Manocchio trial, Kelley admitted that the meeting did not take place at the restaurant he had previously named.⁷²⁸ In fact, the previously named restaurant had been destroyed by fire by the time of the purported meeting.⁷²⁹ Kelley stated that Rico wanted him to put the meeting at that particular restaurant to establish a connection between Patriarca and the owner of the restaurant, effectively assisting Rico in his investigation against the restaurant owner.⁷³⁰ According to Kelley, the FBI had invested millions of dollars in trying to tie the owner of the restaurant to Patriarca, but, up to that point, their investigation had not been successful.⁷³¹ Rico apparently believed that Kelley’s testimony about that particular restaurant would produce valuable circumstantial evidence against the restaurant owner.⁷³²

Third, Kelley testified at the Lerner trial that Rico promised him only immunity and protection for his family in exchange for his testimony and *did not* promise him income, a new identity, and relocation.⁷³³ Rico under oath then corroborated Kelley’s testimony regarding such promises.⁷³⁴ However, at the Manocchio trial, Kelley testified that Rico did, in fact, promise Kelley income for the rest of his life, a new identity, and relocation.⁷³⁵ This was buttressed by the state’s filing of the Financial Report for Witness Protection Program participant Kelley. That report revealed that Kelley was a member of the witness protection program since May 1970 and that he was receiving alimentionation payments in the form of subsistence, housing, medical, travel, documents, relocation, trial, mov-

⁷²⁴ See *Moran*, 542 A.2d at 1090.

⁷²⁵ See *id.* See also Karen Ellsworth, *Sciarra Given Term for Contempt*, PROVIDENCE JOURNAL-BULLETIN, June 3, 1983 (Exhibit 765).

⁷²⁶ See *Moran*, 542 A.2d at 1090. See also Karen Ellsworth, *Sciarra Given Term For Contempt*, PROVIDENCE JOURNAL-BULLETIN, June 3, 1983 (Exhibit 765).

⁷²⁷ See *Moran*, 542 A.2d at 1090.

⁷²⁸ See *id.*; Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

⁷²⁹ Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

⁷³⁰ *Moran*, 542 A.2d at 1090.

⁷³¹ See *Moran*, 542 A.2d at 1090; Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

⁷³² See *Moran*, 542 A.2d at 1090; Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

⁷³³ Lerner Trial Transcript at 2274, 2275, 2278–81, 2300, 2306 (Exhibit 296); *Moran*, 542 A.2d at 1090.

⁷³⁴ Lerner Trial Transcript at 2613–16, 2620–22, 2630–31, 2636 (Exhibit 302). Rico testified that he told Kelley that any cooperation Kelley gave to the United States Government would be brought to the attention of the proper authorities and that the United States Government had agreed to give him personal security. However, Rico testified that he never described to Kelley the kind of personal security and protection that he might expect to receive. Rico testified that he spoke with Theodore F. Harrington of the Justice Department regarding the personal security which Kelley would receive. Rico specifically denied that he told Kelley that he would be provided with a new identity and relocation. *Id.*

⁷³⁵ Trial Transcript, *State v. Manocchio* (R.I. Super. Ct.) at 898, 899, 905–07, 910, 1042–48, 1059–61 [“Manocchio Trial Transcript”] (Exhibit 765).

ing, and miscellaneous expenses from 1971 to 1982.⁷³⁶ He received no less than \$114,848.06.⁷³⁷ When asked why he had lied during Lerner's trial about the promises made to him, Kelley stated, "Agent Rico told me I shouldn't tell all of these things because it looked like I was being paid; that I should just do as he said, and everything would come out all right."⁷³⁸ Shortly afterwards, the Boston FBI office sent a teletype to Washington, stating that Red Kelley testified that he committed perjury at the behest of Special Agent H. Paul Rico.⁷³⁹

Following the Manocchio trial, Lerner filed an application for post-conviction relief in Rhode Island Superior Court based on Kelley's perjurious testimony at his trial in 1970.⁷⁴⁰ The Superior Court of Rhode Island denied Lerner's application for post conviction relief in January 1987, despite finding that "Kelley committed perjury in the 1970 [Lerner] trial."⁷⁴¹ However, on June 10, 1988, the Rhode Island Supreme Court vacated Lerner's conviction. The court held "that Kelley's perjury at Lerner's trial relating to the extent of promises made to Kelley by the FBI in exchange for his testimony and Special Agent Rico's corroboration of that perjury were material to Kelley's credibility and therefore to the issue of Lerner's guilt."⁷⁴² The court ruled that "Kelley's perjury, elicited by the FBI, constituted material exculpatory evidence withheld in violation of the applicant's due process rights."⁷⁴³ In its decision, the court found that FBI Special Agent H. Paul Rico encouraged the state's main witness, "Red" Kelley, to lie under oath at the Lerner trial to protect an informant, to protect and further an ongoing FBI investigation, and to ensure the conviction of the defendants on trial. The court even found that Rico lied to corroborate portions of Kelley's perjury.⁷⁴⁴

Other Department of Justice officials may have known of the perjury at the time of the Lerner trial yet remained silent. When interviewed by Committee staff, Judge Edward Harrington, who at the time of the Lerner trial was Deputy Chief of the United States Department of Justice's Strike Force Against Organized Crime for New England, stated that he knew nothing about Rico's testimony at the Lerner trial and the Rhode Island Supreme Court's finding

⁷³⁶ See Financial Report for Witness Program Participant John "Red" Kelley (Exhibit 764). The report was generated on May 6, 1983, and signed by the Chief of the Witness Security Division of the U.S. Marshal's Service on May 10, 1983.

⁷³⁷ Financial Report for Witness Program Participant John "Red" Kelley (Exhibit 764).

⁷³⁸ Manocchio Trial Transcript at 907 (Exhibit 765). Notwithstanding Kelley's admissions of his prior perjury, Manocchio was found guilty on two charges of accessory before the fact and one charge of conspiracy to commit murder. See *Manocchio*, 496 A.2d at 931; Karen Ellsworth, *Manocchio Guilty on All Charges in Mob Murders*, PROVIDENCE JOURNAL-BULLETIN, June 14, 1983 (Exhibit 768). Manocchio's conviction was later reversed on other grounds. *Manocchio*, 496 A.2d at 931.

⁷³⁹ Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (June 2, 1983) (Exhibit 767). Notwithstanding the extensive coverage received by this testimony in New England, Edward Harrington told the Committee that he was unaware of Kelley's testimony regarding his and Rico's perjury.

⁷⁴⁰ Application for Post-Conviction Relief (Exhibit 771).

⁷⁴¹ *Lerner v. Moran*, Civil No. PM833005 (R.I. Super. Ct. 1987) (Exhibit 805).

⁷⁴² *Moran*, 542 A.2d at 1091.

⁷⁴³ *Id.*

⁷⁴⁴ *Id.* at 1090–1093. At a hearing before this Committee, Rico denied committing perjury or suborning Kelley's perjury at the 1970 Lerner trial. "Investigation into Allegations of Justice Department Misconduct in New England," *Hearing Before the Comm. on Govt. Reform*, 107th Cong. 215 (May 3, 2001) (testimony of H. Paul Rico).

of perjury.⁷⁴⁵ Harrington, when asked about the Rhode Island Supreme Court's finding that Rico committed perjury, said: "It's a stupid lie. Why would Rico tell him that? It's ludicrous."⁷⁴⁶ However, Harrington held out with great pride that he "developed such significant accomplice witnesses as . . . 'Red' Kelley."⁷⁴⁷ Rico also identified Harrington at the Lerner trial as being the one to whom Rico spoke in connection with providing personal security to Kelley.⁷⁴⁸ Moreover, as Head of the Strike Force, Harrington was one of the individuals who decided what terms a witness would receive in exchange for his testimony and, in fact, was instrumental in arranging the terms for Joe "the Animal" Barboza's testimony in three trials.⁷⁴⁹ Likewise, it is quite possible that Harrington decided Kelley's terms as well. In addition, employees of the U.S. Marshals Service and other Department of Justice officials may have known of the perjury due to their involvement with and protection of Kelley.⁷⁵⁰

In conclusion, Rico's interference with Rhode Island law enforcement interfered with the administration of justice and resulted in a considerable waste of government resources in opposing the appeals of guilty defendants. Furthermore, a convicted murderer was released from prison specifically because of the perjury committed by Red Kelley and encouraged by Special Agent Rico. The Rhode Island Supreme Court found that Rico did whatever it took to achieve the ends he desired, which included committing perjury and encouraging the state's main witness to commit perjury. This is just another unfortunate example of the FBI's interference with state law enforcement.

IV. THE USE OF JAMES "WHITEY" BULGER AS AN INFORMANT RAISED QUESTIONS ABOUT WHETHER THE FBI USED ITS AUTHORITY TO ADVANCE OR PROTECT FORMER MASSACHUSETTS STATE SENATE PRESIDENT WILLIAM BULGER

The revelation that the FBI had used James "Whitey" Bulger as an informant raised serious questions for the Committee regarding whether former Special Agent John Connolly or others used the authority of the FBI to advance or protect James "Whitey" Bulger's brother former Massachusetts State Senate President William Bulger. Accordingly, the Committee sought to take testimony from William Bulger regarding his knowledge of the relationship between the FBI and his brother.

⁷⁴⁵ See Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001).

⁷⁴⁶ Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001).

⁷⁴⁷ Letter from Edward Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office, to the Honorable Joseph Biden, United States Senator (Jan. 20, 1988) (Exhibit 813).

⁷⁴⁸ Lerner Trial Transcript at 2621-22 (Exhibit 302).

⁷⁴⁹ See Letter from Edward Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office, to the Honorable Joseph Biden, United States Senator (Jan. 20, 1988) (Exhibit 813); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001).

⁷⁵⁰ Financial Statement for Witness Program Participant John "Red" Kelley (May 6, 1983) (Exhibit 764). This document was prepared by the U.S. Marshal's Service of the United States Department of Justice and sets forth what Kelley was receiving as a witness in the Witness Protection Program.